Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Lleoliad:
Ystafell Bwyllgora 2 - y Senedd

Dyddiad:
Dydd Llun, 19 Mai 2014

Amser:
13.30

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

I gael rhagor o wybodaeth, cysylltwch a:
Gareth Williams
Clerc y Pwyllgor
029 2089 8008/8019
PwyllgorMCD@cymru.gov.uk

Agenda

1 Cyflwyniad, ymddiheuriadau, dirprwyon a datgan buddiannau

2 Offerynnau nad ydynt yn cynnwys materion i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 na 21.3 (Tudalennau 1 - 2)

CLA(4)14-14 - Papur 1 - Offerynnau statudol sydd ag adroddiadau clir

Offerynnau'r Weithdrefn Penderfyniad Negyddol

CLA400 - Rheoliadau Ffederiddio Ysgolion a Gynhelir (Cymru) 2014
Y weithdrefn negyddol; Fe'u gwnaed ar: 29 Ebrill 2014; Fe'u gosodwyd ar: 30 Ebrill 2014; Yn dod i rym ar: 22 Mai 2014.

CLA401 - Gorchymyn Addysg (Ysgolion Bach) (Cymru) 2014
Y weithdrefn negyddol; Fe'i gwnaed ar: 29 Ebrill 2014; Fe'i gosodwyd ar: 30 Ebrill 2014; Yn dod i rym ar: 22 Mai 2014.

CLA402 – Gorchymyn Iechyd Planhigion (Cymru) (Diwygio) (Rhif 2) 2014
Y weithdrefn negyddol; Fe'i gwnaed ar: 6 Mai 2014; Fe'i gosodwyd ar: 8 Mai 2014; Yn dod i rym ar: 31 Mai 2014.

3 Deddfwriaeth arall

SICM 3 - Gorchymyn Cyrff Cyhoeddus (Diddymu Bwyd o Brydain) 2014 (Tudalennau 3 - 21)
CLA(4)-14-14 – Papur 2 – Memorandwm Cydsyniad Offeryn Statudol;
CLA(4)-14-14 – Papur 3 – Gorchymyn;
CLA(4)-14-14 – Papur 4 – Memorandwm Esboniadol.

4 Cynnig Cydsyniad Deddfwriaethol Atodol: Y Bil Dadreoleiddio
(Tudalennau 22 - 29)
CLA (4) 14-14 – Papur 5 – Cynnig Cydsyniad Deddfwriaethol Atodol;
CLA(4)-14-14 – Papur 6 – Nodyn Cyngor Cyfreithiol

5 Cynnig Cydsyniad Deddfwriaethol Bil Cymru (Tudalennau 30 - 47)
CLA(4)-14-14) – Papur 7 – Memorandwm Cydsyniad Deddfwriaethol;
CLA(4)-14-14 – Papur 8 – Datganiad Ysgrifenedig;
CLA(4)-14-14 – Papur 9 – Nodyn Cyngor Cyfreithiol

6 Adroddiad Sybsidiaredd Medi 2013 i Ebrill 2014 (Tudalennau 48 - 58)
CLA(4)-14-14 – Papur 3 – Adroddiad

7 Papur i'w nodi (Tudalennau 59 - 91)

CLA (4) -14-14 - Papur x11 - Adolygiad Llywodraeth y DU o gydbwysedd y cymwyseddau rhwng y DU a'r UE

8 Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y cyhoedd o'r cyfarfod ar gyfer y canlynol:

(vi) lle mae'r pwyllgor yn cyd-drafod cynnwys, casgliadau neu argymhellion adroddiad y mae'n bwriadu ei gyhoeddi; neu'n ymbaratoi i gael tystiolaeth gan unrhyw berson;

(ix) lle mae unrhyw fater sy'n ymwneud â busnes mewnol y pwyllgor, neu fusnes mewnol y Cynulliad, i gael ei drafod.

Ystyried ymateb y Pwyllgor i adolygiad Llywodraeth y DU o gydbwysedd y cymwyseddau rhwng y DU a'r UE (Tudalennau 92 - 93)

CLA(4)-14-14 - Papur 12

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Offerynnau Statudol Gydag Adroddiadau Clir
19 Mai 2014

CLA400 - Rheoliadau Ffedereiddio Ysgolion a Gynhelir (Cymru)

2014Gweithdrefn: Cadarnhaol

Roedd Mesur Addysg Cymru 2011 yn rhoi'r pŵer i awdurdodau lleol sefydlu ffederasiwn o ddwy neu fwy o ysgolion gan ddefnyddio proses i'w nodi mewn rheoliadau. Mae'r Rheoliadau hyn yn nodi'r broses y mae'n ofynnol i awdurdodau lleol a chyrff llywodraethu eu dilyn er mwyn ffedereiddio, dad-ffedereiddio neu ddiddymu ffederasiwn; yn nodi cyfansoddiad ac aelodaeth corff llywodraethu wedi'i ffedereiddio, sydd rhwng 15 a 27 o lywodraethwyr; yn pennu uchafswm o chwech o ran nifer yr ysgolion a gaiff ffedereiddio ac yn nodi'r fframwaith llywodraethu y caiff cyrff llywodraethu weithredu a chynnal ei fusnes o'i fewn. Yn ogystal, maent yn cydgrynhoi, gyda rhai gwelliannau, Rheoliadau Ffedereiddio Ysgolion a Gynhelir a Diwygiadau Amrywiol (Cymru) 2010 ac yn dirymu'r Rheoliadau hynny.

CLA401 – Gorchymyn Addysg (Ysgolion Bach) (Cymru) 2014

Gweithdrefn: Cadarnhaol

Mae'r Gorchymyn hwn yn nodi ysgol fach a gynhelir at ddibenion Pennod 1 o Ran 2 o Fesur Addysg (Cymru) 2011 ("Mesur 2011"). Mae'r bennod honno'n nodi'r fframwaith statudol ar gyfer ffedereiddio ysgolion a gynhelir. Mae Adran 11 o Fesur 2011 yn darparu y caiff awdurdod lleol wneud cynigion i ffedereiddio ysgolion ac nad yw rhai darpariaethau penodol sy'n ymwneud â chyhoeddi ac ymgynghori yn gymwys i gynnig i ffedereiddio dim ond ysgolion bach.

CLA402 - Gorchymyn Iechyd Planhigion (Cymru) (Diwygio) (Rhif 2) 2014

Gweithdrefn: Cadarnhaol

Mae'r Gorchymyn hwn yn diwygio Gorchymyn Iechyd Planhigion (Cymru) 2006 sy'n cynnwys mesurau sy'n atal heintiau ac afiechydon niweidiol ymysg planhigion rhag dod i mewn a lledaenu. Mae'n ymestyn y cynllun hysbysiad statudol ar gyfer rhywogaethau penodol o goed i gynnwys deunyddiau planu llwyfen a hefyd yn gweithredu Cyfarwyddeb Gweithredu'r Comisiwn 2014/19/EU a Chyfarwyddeb Gweithredu'r Comisiwn 2014/62/EU a Chyfarwyddeb Gweithredu'r Comisiwn 2014/62/EU.

MEMORANDWM CYDSYNIAD OFFERYN STATUDOL

Gorchymyn Cyrff Cyhoeddus (Diddymu Bwyd o Brydain) 2014

1. Gosodir y Memorandwm Cydsyniad Offeryn Statudol hwn o dan Reol Sefydlog ("RhS") 30A.2. Mae RhS 30A yn rhagnodi bod rhaid gosod Memorandwm Cydsyniad Offeryn Statudol ac y ceir cyflwyno Cynnig Cydsyniad Offeryn Statudol gerbron Cynulliad Cenedlaethol Cymru ("y Cynulliad") os bydd Offeryn Statudol y DU yn gwneud darpariaeth, mewn perthynas â Chymru, sy'n diwygio'r ddeddfwriaeth sylfaenol o fewn cymhwysedd deddfwriaethol y Cynulliad .

2. Gosodwyd Gorchymyn Cyrff Cyhoeddus (Diddymu Bwyd o Brydain) 2014 gerbron y Senedd ar 6 Mai 2014 a gerbron y Cynulliad ar 9 Mai 2014. Gellir gweld y gorchymyn yn:

   http://www.legislation.gov.uk/ukdsi/2014/9780111114599

3. Mae adran 9(6) o Ddeddf Cyrff Cyhoeddus 2011 yn gwneud yn ofynnol cael cydsyniad y Cynulliad mewn amgylchiadau pan fo Gorchymyn a wnaed o dan adrannau 1 i 5 o'r Ddeddf honno yn gwneud darpariaeth a fyddai o fewn cymhwysedd deddfwriaethol y Cynulliad pe bai wedi ei chynnwys mewn Deddf y Cynulliad.

Crynodeb o'r Gorchymyn a'i amcan

4. Amcan y Gorchymyn yw diddymu'r cyngor a elwir Bwyd o Brydain (BoB), a sefydlwyd gan adran 1 o Ddeddf Marchnata Amaethyddol 1983. Yn syml, mae'r Gorchymyn hwn yn diddymu Deddf Marchnata Amaethyddol 1983 ac yn diddymu BoB yn gyfreithiol.

5. Mae'r Gorchymyn yn ymestyn i Gymru, Lloegr, Yr Alban a Gogledd Iwerddon.

Y ddarpariaeth sydd i'w gwneud gan Orchymyn Cyrff Cyhoeddus (Diddymu Bwyd o Brydain) 2014 y gofynnir am gydsyniad ar ei chyfer

6. Mae erthygl 2 o'r Gorchymyn drafft yn diddymu'r cyngor a elwir "Food from Britain" ac a sefydlwyd gan adran 1 o Ddeddf Marchnata Amaethyddol 1983. Mae'n darparu hefyd ar gyfer trosglwyddo eiddo, hawliau a rhwymedigaethau'r cyngor i'r Ysgrifennydd Gwladol dros yr Amgylchedd, Bwyd a Materion Gwledig.

7. Mae erthygl 3 o'r Gorchymyn drafft yn darparu bod rhaid i'r Ysgrifennydd Gwladol baratoi adroddiad ar yr hyn wnaed o ran cyflawni swyddogaethau BoB rhwng 1 Ebrill 2013 a'r dyddiad y'i diddymir. Bydd rhaid i'r Ysgrifennydd

Gwladol baratoi datganiad o gyfrifon ar gyfer BoB am y cyfnod hwnnw, a chyflwyno'r datganiad wedyn i'r Rheolwr ac Archwilydd Cyffredinol. Bydd rhaid i'r Rheolwr ac Archwilydd Cyffredinol archwilio, ardystio a rhoi adroddiad ar y datganiad o gyfrifon ac anfon copi o'r datganiad ardystiedig at Weinidogion Cymru. Bydd rhaid i Weinidogion Cymru osod y ddau adroddiad gerbron Cynulliad Cenedlaethol Cymru.

8. Mae erthygl 4 a'r Atodlen i'r Gorchymyn yn diddymu Deddf Marchnata Amaethyddol 1983 yn ei chyfanrwydd a hefyd yn gwneud diwygiadau canlyniadol angenrheidiol, sef dileu cyfeiriadau at y Ddeddf honno ac at Fwyd o Brydain, sy'n digwydd mewn deddfwriaeth arall.

9. Ym marn Llywodraeth Cymru, mae darpariaethau Gorchymyn Cyrff Cyhoeddus (Diddymu Bwyd o Brydain) yn dod o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru o dan Ran 1 o Atodlen 7 i Ddeddf Llywodraeth Cymru 2006 mewn perthynas â phynciau a restrir o dan 1 (amaethyddiaeth, coedwigaeth, anifeiliaid, planhigion a datblygu gwledig), 4, (datblygu economaidd) ac 8 (bwyd).

Pam y mae'n briodol i'r Gorchymyn wneud y ddarpariaeth hon

10. Mae Llywodraeth Cymru o'r farn ei bod yn briodol defnyddio cyfrwng deddfwriaethol sengl ar gyfer diddymu Bwyd o Brydain. Corff oedd Bwyd o Brydain a berthynai i'r DU gyfan; a'r ffordd fwyaf effeithlon o'i ddiddymu yn y pedair gwlad yr un pryd fydd defnyddio gorchymyn sengl. Er bod gan Lywodraeth Cymru a'r Cynulliad y pwerau sydd eu hangen i'w ddiddymu yng Nghymru, y ffordd sy'n ymddangos fwyaf ymarferol a chymesur yw defnyddio'r Gorchymyn hwn i gyflawni'r diddymiad yng Nghymru, Lloegr, Yr Alban a Gogledd Iwerddon.

11. Corff marw yw BoB, ac ni fu'n weithredol ers 2009. Nid oes ganddo staff, mangre, asedau na rhwymedigaethau. Cyflawnir ei swyddogaethau blaenorol bellach gan adrannau eraill o'r llywodraeth a chyrff o fyd diwydiant. Unig effaith y Gorchymyn hwn fydd diddymu BoB o fewn y gyfraith. Ni fydd y ddiddymiad yn effeithio ar fusnes, a bydd yn sicrhau arbedion i drethdalwyr. Ystyrir bod Deddf Cyrff Cyhoeddus 2011 yn gyfrwng priodol ac effeithiol ar gyfer diddymu BoB.

12. Tra bydd y Ddeddf Marchnata Amaethyddol yn parhau mewn grym, bydd DEFRA dan ddyletswydd i gyhoeddi Adroddiad Blynyddol a Chyfrifon ar gyfer BoB ac i'w gosod gerbron pob un o Lywodraethau'r DU bob blwyddyn. Er nad oes gweithgarwch i adrodd arno, mae hyn yn achosi cost i DEFRA o tua £5,000 y flwyddyn am baratoi, archwilio ac argraffu'r adroddiad. Bydd diddymu'r Ddeddf Marchnata Amaethyddol yn dileu'r gost ddiangen hon i'r trethdalwr.

Y goblygiadau ariannol

13. Nid fydd unrhyw oblygiadau ariannol o ganlyniad i ddiddymu Bwyd o Brydain. Nid oes gan Bwyd o Brydain unrhyw staff, a cham gweinyddol yn unig yw ei ddiddymu, gyda'r nod o leihau nifer y cyrff cyhoeddus afraid.

Alun Davies AM
Y Gweinidog Cyfoeth Naturiol a Bwyd
Mai 2014

Draft Order laid before Parliament under section 11 of the Public Bodies Act 2011, for approval by resolution of each House of Parliament after the expiry of the 40-day period referred to in section 11(4) of that Act.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2014 No.

AGRICULTURE

PUBLIC BODIES

The Public Bodies (Abolition of Food from Britain) Order 2014

Made - - - - ***

Coming into force in accordance with article 1

The Secretary of State, in exercise of the powers conferred by sections 1(1), 6(1) and (5), 24(1) and 35(2) of the Public Bodies Act 2011(**a**) ("the Act"), makes the following Order.

In accordance with section 8 of the Act, the Secretary of State considers that this Order—

(a) serves the purpose of improving the exercise of public functions, having had regard to the factors set out in section 8(1) of the Act;

(b) does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

The Scottish Parliament has consented to the making of this Order in so far as its consent is required by section 9(1) of the Act.

The Northern Ireland Assembly has consented to the making of this Order in so far as its consent is required by section 9(3) of the Act.

The National Assembly for Wales has consented to the making of this Order in so far as its consent is required by section 9(6) of the Act.

The Secretary of State has carried out consultation in accordance with section 10 of the Act.

The Secretary of State has consulted the Scottish Ministers in accordance with section 88(2) of the Scotland Act 1998(**b**) and the Welsh Ministers in accordance with section 63(1) of the Government of Wales Act 2006(**c**).

(**a**) 2011 c. 24.
(**b**) 1998 c. 46.
(**c**) 2006 c. 32.

A draft of this Order and an explanatory document containing the information required in section 11(2) of the Act have been laid before Parliament in accordance with section 11(1) after the end of the period of twelve weeks mentioned in section 11(3).

In accordance with section 11(4) of the Act, the draft of this Order has been approved by resolution of each House of Parliament after the expiry of the 40-day period referred to in that provision.

Citation, extent and commencement

1.—(1) This Order may be cited as the Public Bodies (Abolition of Food from Britain) Order 2014.

(2) The repeals and revocations made by article 4 and the Schedule have the same extent as the provisions to which they relate.

(3) This Order comes into force on the day after the day on which it is made, except as provided by paragraph (4).

(4) The entry in the table of repeals in the Schedule relating to the Public Bodies Act 2011 comes into force two days after the day on which this Order is made.

Abolition of Food from Britain

2.—(1) The council established by section 1 of the Agricultural Marketing Act 1983(**a**) (Food from Britain) is abolished.

(2) The property, rights and liabilities of the council are transferred to and vest in the Secretary of State for Environment, Food and Rural Affairs.

Final report and accounts

3.—(1) The Secretary of State must prepare a report of what has been done in the discharge of Food from Britain's functions during the periods—

(a) beginning with 1st April 2013 and ending with 31st March 2014; and

(b) beginning with 1st April 2014 and ending immediately before the day on which this article comes into force.

(2) The Secretary of State must—

(a) prepare a statement of accounts of Food from Britain in respect of the periods referred to in paragraph (1)(a) and (b), and

(b) send a copy of the statement to the Comptroller and Auditor General.

(3) The Comptroller and Auditor General must—

(a) examine, certify and report on the statement prepared under paragraph (2), and

(b) send a copy of the certified statement and of the Comptroller and Auditor General's report to the Secretary of State, the Scottish Ministers, the Welsh Ministers and the Department of Agriculture and Rural Development in Northern Ireland as soon as possible.

(4) The Secretary of State must lay the final document before each House of Parliament.

(5) The Scottish Ministers must lay the final document before the Scottish Parliament.

(6) The Welsh Ministers must lay the final document before the National Assembly for Wales.

(7) The Department of Agriculture and Rural Development in Northern Ireland must lay the final document before the Northern Ireland Assembly.

(**a**) 1983 c. 3.

(8) In this article, "the final document" means a document consisting of—

(a) a copy of the report prepared under paragraph (1), and

(b) a copy of the statement and of the report sent under paragraph (3)(b).

Repeals and revocations

4. The provisions mentioned in the Schedule are repealed or revoked to the extent specified.

Name
Parliamentary Under Secretary of State
Date Department for Environment, Food and Rural Affairs

SCHEDULE

Article 4

Repeals and revocations

Table of repeals

Short title	*Extent of repeal*
Parliamentary Commissioner Act 1967(**a**)	In Schedule 2, the entry relating to Food from Britain.
Agriculture Act 1967(**b**)	Part 4.
House of Commons Disqualification Act 1975(**c**)	In Schedule 1, in Part 3, the entry relating to the Chairman of Food from Britain.
Northern Ireland Assembly Disqualification Act 1975(**d**)	In Schedule 1, in Part 2, the entry relating to Food from Britain.
Agricultural Marketing Act 1983	The whole Act.
Agriculture Act 1986(**e**)	Section 8. Section 24(2) and (3). In section 24(7), "8,".
Freedom of Information Act 2000(**f**)	In Schedule 1, in Part 6, the entry relating to Food from Britain.
Scottish Public Services Ombudsman Act 2002(**g**)	In Schedule 2, in Part 2, paragraph 70.
Natural Environment and Rural Communities Act 2006(**h**)	In Schedule 7, paragraph 11.

(**a**) 1967 c. 13. Schedule 2 was substituted by article 2 of S.I. 2011/2986. There are amendments to Schedule 2, but none is relevant.
(**b**) 1967 c. 22. Repeals to provisions of Part 4 were made by the Statute Law (Repeals) Act 2004 (c. 14). Section 2 of the Agricultural Marketing Act 1983 transferred the functions of the Central Council for Agricultural and Horticultural Co-operation to Food from Britain.
(**c**) 1975 c. 24.
(**d**) 1975 c. 25.
(**e**) 1986 c. 49. Repeals to sections 8 and 24 were made by the Statute Law (Repeals) Act 2004.
(**f**) 2000 c. 36. There are amendments to Schedule 1 that are not relevant to this Order.
(**g**) 2002 asp 11.
(**h**) 2006 c. 16.

Short title	*Extent of repeal*
Public Bodies Act 2011	In Schedule 1, the entry relating to Food from Britain.

Table of revocations

Title	*Extent of revocation*
The Agricultural Marketing Act 1983 (Commencement) Order 1983(**a**)	The whole Order.
The Agriculture Act 1986 (Commencement No. 3) Order 1986(**b**)	The whole Order.
The Companies Act 1989 (Eligibility for Appointment as Company Auditor) (Consequential Amendments) Regulations 1991(**c**)	In the Schedule, paragraph 48.
The House of Commons Disqualification Order 1993(**d**)	In the Schedule— (a) in paragraph 2, the entry relating to Food from Britain, (b) in paragraph 4, the entry relating to the Chairman of Food from Britain.
The Agriculture Act 1986 (Commencement No. 6) Order 1998(**e**)	The whole Order.
The Scotland Act 1998 (Cross-Border Public Authorities) (Specification) Order 1999(**f**)	In the Schedule, the entry relating to Food from Britain.
The Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 1999(**g**)	In Schedule 1, the entry relating to Food from Britain. Schedule 11.
The Northern Ireland Act 1998 (Designation of Public Authorities) Order 2001(**h**)	In Schedule 1, the entry relating to Food from Britain.
The Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002(**i**)	Article 3(1)(f) (but not the "or" at the end of that sub-paragraph).
The Freedom of Information Act 2000	In Schedule 1, in Part 1, the entry relating to

(**a**) S.I. 1983/366 (C. 13).
(**b**) S.I. 1986/1596 (C. 57).
(**c**) S.I. 1991/1997, to which there are amendments not relevant to this Order.
(**d**) S.I. 1993/1572.
(**e**) S.I. 1998/879 (C. 19).
(**f**) S.I. 1999/1319, to which there are amendments not relevant to this Order.
(**g**) S.I. 1999/1747, to which there are amendments not relevant to this Order.
(**h**) S.I. 2001/1294.
(**i**) S.I. 2002/794, to which there is an amendment not relevant to this Order.

Title	*Extent of revocation*
(Commencement No. 2) Order 2002(**a**)	Food from Britain.
The Northern Ireland Act 1998 (Modification of Enactments) Order 2002(**b**)	Article 7.
The Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2003(**c**)	Article 13. In the Schedule, the entry relating to Food from Britain.
The Companies Act 2006 (Consequential Amendments etc) Order 2008(**d**)	In Schedule 1, in Part 1, paragraph 1(bb).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order abolishes the council known as Food from Britain established by section 1 of the Agricultural Marketing Act 1983 (c. 3). It transfers to, and vests in, the Secretary of State for Environment, Food and Rural Affairs the property, rights and liabilities of the council, and it makes provision for the preparation of a final report and statement of accounts. It also makes consequential repeals and revocations.

No impact assessment has been produced as no cost to the business or voluntary sectors is foreseen.

(**a**) S.I. 2002/2812 (C. 86), to which there are amendments not relevant to this Order.
(**b**) S.I. 2002/2843.
(**c**) S.I. 2003/1326, to which there are amendments not relevant to this Order.
(**d**) S.I. 2008/948, to which there are amendments not relevant to this Order.

EXPLANATORY DOCUMENT TO

THE PUBLIC BODIES (ABOLITION OF FOOD FROM BRITAIN) ORDER 2014

2014 No. [XXXX]

1. This explanatory document has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament under section 11(1) of the Public Bodies Act 2011.

2. Purpose of the instrument

2.1 To abolish the body known as Food from Britain (FFB), established by section 1 of the Agricultural Marketing Act 1983 as part of the Government's public body reform programme.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 FFB was established as a Non-Departmental Public Body (NDPB) by the Agricultural Marketing Act 1983 and came into existence on 23rd March that year, originally to develop and coordinate the marketing of UK food. FFB later focused on promoting exports and assisting the marketing of quality regional food until its administrative closure in 2009.

4.2 The FFB Council took a decision in 2008 to cease FFB's activities, following a reduction in its grant in aid by Defra Ministers. The decision to close FFB was announced in a written Ministerial Statement[1] to Parliament on 26th March 2008, by the then Secretary of State for Environment, Food and Rural Affairs. FFB ceased operating in March 2009.

4.3 Whilst FFB no longer exists as an operating body, the legislation which established FFB (the Agricultural Marketing Act 1983) does not provide for its abolition. Therefore, FFB was included in Schedule 1 to the Public Bodies Act 2011 in order to achieve its legislative dissolution. An announcement on Defra's proposals to reform a number of public bodies, including FFB, was made in July 2010 by the then Secretary of State for Environment, Food and Rural Affairs.

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1 http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080326/wmstext/80326m0001.htm#column_10WS

4.4 The Minister for the Cabinet Office announced the outcome of the Public Bodies Bill Review on 14 October 2010, which included the proposal to abolish the FFB. The Public Bodies Review examined whether a body's functions are needed and, if they are, whether the body should continue to operate at arm's length from Government. This decision was based upon three tests:

- Does it perform a technical function?
- Do its activities require political impartiality?
- Does it need to act independently to establish facts?

5. Territorial Extent and Application

5.1 The Order extends to England and Wales, Scotland and Northern Ireland, except in so far as related repeals have the same extent as the provisions to which they relate.

6. European Convention on Human Rights

6.1 George Eustice, Parliamentary Under Secretary of State for the Department for Environment, Food and Rural Affairs, has made the following statement regarding Human Rights:

> "In my view the provisions of the Public Bodies (Abolition of Food from Britain) Order 2014 are compatible with the Convention Rights."

7. Policy background

7.1 Food from Britain was established in 1983 as a Non-Departmental Public Body (NDPB) by the Agricultural Marketing Act 1983 to organise, develop, promote, encourage and coordinate the marketing in the UK and elsewhere of UK agricultural and horticultural produce, fish (other than sea fish) and fish products and any other food produced or processed in the UK. FFB later focused on promoting exports and assisting the marketing of quality regional food. It is the joint responsibility of the four agriculture Ministers in the UK but Defra acts as its sponsor department.

7.2 FFB provided organisations with a range of business development and information services such as market assessment reports, trade missions and support at international food and drink exhibitions to help break into and maintain a presence in international markets. It had a network of independent overseas offices in the key primary markets of Western Europe as well as in North America and Scandinavia and representatives in Eastern Europe and the Far East.

7.3 FFB also took the lead in the delivery of a national programme of activity to support the quality regional food sector in England. The programme,

for which funding ended in 2007/08, focussed on trade development, consumer awareness and increasing business competitiveness. FFB received approximately £5m per year in grant-in-aid from Defra (on behalf of the four UK Agriculture Departments) for export promotion work, in addition to £1m per annum paid by Defra for its regional food work. It also generated further income from industry and by working with industry organisations.

The administrative closure of FFB

7.4 Against the background of the Comprehensive Spending review (CSR) in 2007/08 and changing Departmental priorities, Defra decided to reduce the amount of grant-in-aid available to FFB for 2008/09 to £4 million, with the expectation that the funding would come to an end before the conclusion of that CSR period (2008/09 - 2010/11).

7.5 The FFB Council took the view that FFB could not continue to function with the reduced level of Government funding and concluded that FFB should cease operating at the end of the 2008-09 financial year. Ministers in Defra and the Devolved Administrations accepted this. Hilary Benn, the then Secretary of State for Defra, made a Written Ministerial Statement before Parliament in March 2008 announcing that FFB would be closed.

7.6 FFB ceased operating and vacated its former offices in March 2009. All of FFB's staff were made redundant or retired with the exception of one member of staff with responsibility for some of the delivery work relating to the EU Protected Food Name Scheme. That person transferred with that work to ADAS UK Ltd in 2009 following a tender exercise by Defra. FFB's residual responsibilities, assets and liabilities were subsequently transferred to Defra. This included the legal ownership rights to the *Food from Britain* name and to the www.foodfrombritain.com domain name, which Defra still retains. The closedown was carried out in anticipation of legislation to dissolve FFB in law.

7.7 As part of the closedown work Defra explored with FFB the possibility of successor arrangements. A number of organisations expressed an interest in licensing the FFB brand and taking over elements of its business, but were unwilling to take on the TUPE (Transfer of Undertaking (Protection of Employment) Regulations) liabilities.

7.8 Following the decision to cease FFB activities, Defra accepted responsibility for the residual liability of the FFB pensions Scheme. In order to safeguard future payments, the FFB Trustees purchased a bulk annuity policy with a commercial insurer to provide for the scheme member's pension benefits to be paid in full. The majority of the cost was met by the scheme from its assets. Defra agreed to fund the balance, which was in the region of £8 million.

Residual obligations

7.9 Whilst the Agricultural Marketing Act remains in force, Defra and the Devolved Administrations continue to have a legal obligation to publish Annual Report and Accounts for FFB which must be laid before UK Parliament and each National Assembly/Parliament each year. Despite having no activity to report, the preparation, auditing and printing of the report costs Defra in the region of £5,000 per annum. By repealing the Agricultural Marketing Act, the abolition Order will eliminate this unnecessary cost to the taxpayer.

FFB legacy

7.10 Following the cessation of FFB's activities in 2009, advice and support to UK food and drink exporters was made available from UK Trade & Investment, as well as Scottish Development International, Welsh Government's Food and Market Development Division and Invest Northern Ireland. FFB's former network of independent International offices (now called the Green Seed Group) continues to offer consultancy services to UK exporters of food and drink on a commercial basis. The Food and Drink Federation continues to host a webpage[2] which signposts the main organisations that continue to offer export support to British food and drink companies. The Open to Export website[3] provides information on exporting, contacts and case studies to help exporters. The Food and Drink Exporters Association was set up specifically to help exporters in the sector and it works closely with Defra and UK Trade and Investment. In addition, as part of the Export Action Plan (see paragraph 7.12) there is a specific action for industry and government to collaborate in the development of export information tools. The delivery work relating to the EU Protected Food Name Scheme transferred to Defra in 2012.

Government support for food and drink exports

7.11 Despite the closure of FFB, exports in the agri-food sector continue to grow. They increased from £13.2bn in 2008 (FFB's final full year of operation) to £18.2bn in 2012. The Government is committed to working closely with industry stakeholders to boost exports, promote innovation and encourage further growth, particularly amongst SMEs.

7.12 The Food and Drink Exports Action Plan, which applies to businesses across all of the UK, is key to this activity. The recently re-launched Plan[4] aims to contribute £500m to the economy through assisting up to 1,000 UK companies by 2015 and thereby contribute to an increase in UK exports of at least £1bn by 2015. This reflects Government and industry commitment to ensure that UK food and drink companies are able to make the most of export opportunities and maximise their share of global markets. The Action Plan

[2] http://www.fdf.org.uk/exports.aspx
[3] http://opentoexport.com/

[4] https://www.gov.uk/government/publications/uk-food-and-drink-international-action-plan

aims to deliver improvements in promotion, trade development, unlocking markets and simplifying support and trade procedures for industry and so grow exports in the UK food and drink sector.

7.13 In Northern Ireland, Invest NI has for many years offered a comprehensive range of support to food companies. Following the cessation of FFB programmes the range of trade and marketing support through Invest NI was strengthened and a new Regional Food Programme introduced by DARD. In addition Invest NI delivers a programme of trade missions to international markets. Also, the Agri-Food Strategy Board which was appointed by Ministers in Northern Ireland in 2012 continues to play an important role in ensuring that the potential of the sector is maximised. Recommendations on growing the market share (put forward by the Board in its strategic plan for the sector, '*Going for Growth'*) targeted export-led growth and are currently being considered. A final response from the NI Executive and agreed implementation will follow.

7.14 In Scotland, Scottish Development International (SDI) continues to offer an extensive range of international products and support services to Scottish food and drink companies. This programme, since the closure of FFB, has continued and in fact has been enhanced through a number of additional activities including appointment of in-market specialist food and drink executives in key markets including US, Germany and China. SDI has also worked with industry partners to deliver a comprehensive programme of Missions, Exhibitions and Learning Journeys to key markets. SDI works closely with Scotland Food and Drink, the industry leadership organisation, to ensure that the international aspirations of the sector in Scotland are fully supported through an agreed strategic approach to key target markets. This approach was augmented on 4 March 2014, with the launch of the Scotland Food and Drink Export Plan. This sets out an export target of £7Billion in overseas food and drink by 2017, with a focus on priority markets.

7.15 In Wales, the Welsh Government is strongly committed to the growth and development of its food sector. The Government supports Welsh food and drink produce through a number of initiatives including support towards attending major food and drink trade exhibitions both internationally and within the UK, as well as through a programme of measures including new product development, innovation, programmes for business mentoring and market development. Also supported is the development of value-added supply chains using the primary produce of the farming industry; with the aim of helping the food sector in Wales become more sustainable economically, socially and environmentally.

7.16 Since the closure of Food from Britain, the Welsh Government has funded ADAS to support the developing potential Protected Food Name

applications in Wales, which would build upon the success of the Protected Geographical Indication status awarded to Welsh Lamb and Welsh Beef. The EU Protected Food Name Scheme identifies regional and traditional foods whose authenticity and origin can be guaranteed. Under this system a named food or drink registered at a European level will be given legal protection against imitation throughout the EU.

Legislative abolition

7.17 Essentially FFB is a defunct body which has not operated since 2009. It has no staff, premises, assets or liabilities. Its former functions are carried out by other Government departments and industry bodies. This Order will serve to dissolve FFB in law, deal with final accounting and reporting obligations, and make consequential legislative repeals and revocations. It also contains formal provision vesting in the Secretary of State for Environment, Food and Rural Affairs any remaining property, rights and liabilities of the council, although this is included only as a precaution. Its abolition will not impact on business and will generate savings for the taxpayer. The Public Bodies Act 2011 is seen as an appropriate and effective vehicle for abolishing FFB.

7.18 This Order requires the consent of the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales before it can be made.

8. Compliance with section 8(1) of the Public Bodies Act 2011

8.1 Section 8 of the Public Bodies Act 2011 states that a Minister may make an order under that Act only where it is considered that the order serves the purpose of improving the exercise of public functions, having regard to efficiency, effectiveness, economy and securing appropriate accountability to Ministers. The Minister considers that this Order serves the purpose of improving the exercise of public functions in section 8(1) of the 2011 Act, having regard to efficiency, effectiveness, economy and securing appropriate accountability to Ministers. Ministers have reviewed the proposed legislative abolition of FFB and are satisfied that it would serve the purpose of improving the exercise of public functions having regard to:

8.2 **Efficiency -** The proposal to abolish FFB is driven by a desire to remove a defunct non-departmental public body whose continued legislative existence results in an unnecessary annual cost to the taxpayer, providing no value. Whilst FFB no longer exists as an operating body, the legislation which established FFB (the Agricultural Marketing Act 1983) does not provide for its abolition.

8.3 **Effectiveness –** FFB no longer exists as a functioning body and has not existed as a functioning body for almost five years. Essentially FFB is a

defunct body; it has no staff, premises, assets or liabilities. Its former functions are carried out by other Government departments and industry bodies.

8.4 **Economy** – There is no budget allocated for FFB. As explained in paragraph 7.9, its abolition will result in savings in the region of £5,000 per annum.

8.5 **Securing appropriate accountability to Ministers-** Abolition of FFB does not create any issues of accountability given that the body is no longer operational. The Government is committed to working closely with industry stakeholders to boost exports, promote innovation and encourage further growth, particularly amongst SMEs.

9. Compliance with section 8 (2) of the Public Bodies Act 2011

9.1 The Minister considers that -

a) The Order does not remove any necessary protection

The abolition of FFB will not result in the removal of any protection for the businesses that made use of its former services.

b) The Order does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise

The abolition of FFB will not prevent any business or individual from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise.

10. Interest in the Houses of Parliament

10.1 There was no significant discussion of FFB during the passage of the Public Bodies Act**.**

11. Consultation outcome

11.1 Defra and the Devolved Administrations published a joint consultation paper on the Government's proposal to abolish FFB on 19 September 2013. It was decided a full 12 week consultation would be disproportionate for a body which had been defunct for over 4 years. As there was unlikely to be great interest in FFB's legislative abolition, a 6 week consultation period was considered sufficient. No criticism of the timescale for consultation was made by consultation respondents.

11.2 The consultation was made available via an online survey and over 80 selected consultees were invited to comment on the proposals. These included

commercial food and drink enterprises, trade associations, levy boards, consultancies, regional food groups, Government departments and Devolved Administrations. The consultation paper was also made available on the Government website[5].

11.3 The consultation closed on 31 October 2013 by which time a total of eight responses had been received. No other comments were received after this date. Defra and the Devolved Administrations consider that the consultation process in relation to this Public Bodies Order is consistent with the Government's consultation principles (of July 2012 and October 2013).

Consultation questions

11.4 The consultation asked three questions:

- Do you support the Government's preferred option to repeal the Agricultural Marketing Act and abolish FFB in law?
- If you do not support the Government's preferred option, what is your rationale for retaining the Agricultural Marketing Act?
- Do you have any additional points you would wish Ministers to consider before making their final decision?

11.5 Of the responses received, four respondents supported the government's preferred option, one was opposed, and two did not provide a clear view either way. One anonymous respondent did not want their response made public.

Summary of responses

11.6 A summary of the responses is shown in the table below:

Organisation	**Do you support the Government's preferred option to abolish FFB in law?**	**If you do not support the Government's preferred option, what is your rationale for retaining the Agricultural Marketing Act?**	**Do you have any additional points you would wish Ministers to consider before making their final decision**
The Wine and Spirit Trade Association	Yes		Abolition would appear to be sensible.
Walkers Shortbread Limited	No explicit view expressed		Recommend the FFB brand name is retained by Government, in case FFB is resurrected in the future and to prevent it being used by a commercial body. FFB hugely beneficial organisation. Inconceivable that [in

[5] https://www.gov.uk/government/consultations/abolition-of-food-from-britain

			2009] the government could not sustain the modest contribution to retain FFB, especially when considering the [significantly greater] support devoted to export promotion by the French and German Governments.
Tate & Lyle Sugars	No strong views either way.		No comments.
Individual response	No	The Union flag should be allowed on British meat products.	[Comments out of scope of the consultation, example as follows:] By law, Britain is not and has never been part of the European Union. When he signed the European Communities Act in 1972, Edward Heath knowingly and wilfully deceived and betrayed the British people into foreign rule by the EEC/EU. This was the most calculatingly grievous and outrageous treason in British history.
Food and Drink Federation	Yes		FFB played a valuable role in supporting exporters but this support was not adequately replaced. The lack of export support from organisations and Government in recent years has left businesses unaware of the opportunities overseas. However, strong progress made over the last year with the Food and Drink Federation, Defra and UKTI working closely together to inspire businesses to begin exporting. Must now step up our efforts under the new UK Food and Drink Action Plan to inspire businesses to begin

			exporting and to export more.
Individual response	Yes		No comments
Northern Ireland Food and Drink Association	Yes		No comments
Anonymous	Unclear		No comments

11.7 The joint response to the consultation from the UK and Devolved Administrations explained that it welcomed that fact that the majority of those who responded are in favour of the abolition of Food from Britain.

11.8 The response noted the call to support businesses to export. It pointed out that the UK Government and Devolved Administrations in Scotland, Wales and Northern Ireland were currently working closely with industry to help UK food and drink businesses. There was a real commitment to ensure that UK food and drink companies were able to make the most of export opportunities and maximise their share of global markets. This is reflected in the recently revised Food and Drink Exports Action Plan (see paragraph 7.12). Each region also has its own specifically tailored plans with this aim in view.

11.9 The Government concluded that it would, at an early opportunity, lay before Parliament a draft Order under the Public Bodies Act to abolish Food from Britain.

12. Guidance

12.1 No guidance is deemed necessary.

13. Impact

13.1 This Order repeals the Agricultural Marketing Act 1983 (and related enactments in consequence) and dissolves FFB in law. It is not concerned with the cessation of FFB's former functions or the administrative closure of the body in 2009. As such this Order has no impact on business, charities or voluntary bodies and does not impose any new costs, administrative burdens or information obligations. An impact assessment is not considered necessary.

14. Regulating small business

14.1 The legislation does not apply to small business.

15. Monitoring and review

15.1 There is no tangible outcome to monitor in respect of FFB. However, the Government continues to monitor the support available to exporters and the levels of UK food and drink exports.

16. Contact

16.1 Ian Leggat at the Department for Environment, Food and Rural Affairs (Tel: 020 7238 6477 or email: ian.leggat@defra.gsi.gov.uk) can answer any queries regarding the instrument.

16.2 Copies of all responses to the public consultation exercise can be seen at, or obtained from, Ian Leggat, Area 3A, Nobel House (Tel: 020-7238-6477 or email ian.leggat@defra.gsi.gov.uk).

16.3 Copies of the responses will also be made available to the Environment, Food and Rural Affairs Select Committee and the Secondary Legislation Scrutiny Committee of the House of Lords.

Eitem 4

MEMORANDWM CYDSYNIAD DEDDFWRIAETHOL ATODOL

Y BIL DADREOLEIDDIO: DIWYGIADAU MEWN PERTHYNAS Â DEDDF DALIADAU AMAETHYDDOL 1986, DEDDF BRIDIO CŴN 1973 A DEDDF BRIDIO A GWERTHU CŴN (LLES) 1999

1. Gosodir y Memorandwm Cydsyniad Deddfwriaethol hwn o dan Reol Sefydlog ("RhS") 29.2. Mae Rheol Sefydlog 29 yn rhagnodi bod yn rhaid gosod Memorandwm Cydsyniad Deddfwriaethol, ac y ceir cyflwyno Cynnig Cydsyniad Deddfwriaethol, gerbron y Cynulliad Cenedlaethol os yw Bil gan Senedd y DU yn gwneud darpariaeth mewn perthynas â Chymru at ddiben sydd o fewn cymhwysedd deddfwriaethol y Cynulliad Cenedlaethol, neu at ddiben sy'n addasu'r cymhwysedd hwnnw.

2. Cafodd y Bil Dadreoleiddio (y "Bil") ei gyflwyno yn Nhŷ'r Cyffredin ar 23 Ionawr 2014. Mae'r Bil i'w weld yn:

   http://services.parliament.uk/bills/2013-14/deregulation.html

Crynodeb o'r Bil a'i Amcanion Polisi

3. Mae'r Bil yn cael ei noddi gan Swyddfa'r Cabinet. Amcanion Llywodraeth y DU ar gyfer y Bil yw dileu neu leihau beichiau rheoleiddiol diangen sy'n llesteirio neu'n costio arian i fusnesau, unigolion, gwasanaethau cyhoeddus neu'r trethdalwr.

4. Mae'r Bil yn cynnwys mesurau sy'n ymwneud a meysydd cyffredinol a phenodol sy'n gysylltiedig â busnes, cwmnïau ac ansolfedd, defnyddio tir, tai, trafnidiaeth, cyfathrebu, yr amgylchedd, addysg a hyfforddiant, adloniant, awdurdodau cyhoeddus a gweinyddu cyfiawnder. Mae'r Bil yn darparu hefyd ar gyfer gosod dyletswydd ar y rheini sy'n arfer swyddogaethau rheoleiddiol penodedig i ystyried buddioldeb hyrwyddo twf economaidd. Bydd y Bil hefyd yn diddymu deddfwriaeth nad yw bellach o ddefnydd ymarferol.

Darpariaethau yn y Bil y ceisir cydsyniad ar eu cyfer

Deddf Daliadau Amaethyddol 1986; datrys anghydfodau drwy benderfyniad gan drydydd parti

5. Gofynnir i'r Cynulliad ganiatáu'r diwygiad i'r Bil Dadreoleiddio a osodwyd ar 13 Mawrth 2014, ac sy'n diwygio amryfal adrannau o Ddeddf Daliadau Amaethyddol 1986, ynghyd ag amryfal Atodlenni iddi. Mae'r diwygiadau hynny i Ddeddf 1986 yn gwneud darpariaeth sy'n galluogi'r partïon i gytuno bod anghydfodau (ac eithrio'r rheini sy'n ymwneud â rhybudd i ymadael) yn cael eu setlo gan arbenigwr annibynnol yn hytrach na thrwy gymrodeddu.

6. Ar hyn o bryd, mae Deddf Daliadau Amaethyddol 1986 yn darparu tri dull o ddatrys anghydfodau rhwng landlordiaid a thenantiaid:

a. y Tribiwnlys Tir Amaethyddol (mewn perthynas â Chymru);
b. cymrodeddu;
c. y Llysoedd.

7. Cymrodeddu yw'r prif ddull o ddatrys anghydfodau o dan Ddeddf Daliadau Amaethyddol 1986. O dan y Ddeddf honno, nad yw'n darparu ar gyfer dull arall o ddatrys anghydfodau, mae'n rhaid cyfeirio'r rhan fwyaf o anghydfodau, yn enwedig y rheini sy'n ymwneud ag ystyriaethau amaethyddol ymarferol, i'w cymrodeddu. Effaith y diwygiad fydd darparu ar gyfer y partïon dan sylw broses amgen, llai beichus o ddatrys anghydfodau, sydd hefyd yn un gyflymach a chosteffeithiol

8. Mae'r diwygiadau i Ddeddf Daliadau Amaethyddol 1986 yn gymwys o ran Cymru.

9. Nid yw'r diwygiadau i Ddeddf Daliadau Amaethyddol 1986 yn cynnwys pwerau i Weinidogion Cymru wneud is-ddeddfwriaeth.

10. Mae Llywodraeth Cymru o'r farn bod y darpariaethau hyn o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru i'r graddau y maent yn ymwneud ag:

    a. Amaethyddiaeth (o dan baragraff 1 o Ran 1, Atodlen 7 i Ddeddf Llywodraeth Cymru 2006); a

    b. Tai (o dan baragraff 11 o Ran 1, Atodlen 7 i Ddeddf Llywodraeth Cymru 2006).

Deddf Bridio Cŵn 1973 (p.60) a Bridio a Gwerthu Cŵn (Lles) 1998 (p.11)

11. Gofynnir i'r Cynulliad ganiatáu'r diwygiad i'r Bil Dadreoleiddio, a osodwyd ar 18 Mawrth 2014, ac sy'n diddymu:

    a. Is-adran 1(4)(i) o Ddeddf Bridio Cŵn 1973 (ac sy'n gwneud y diwygiadau canlyniadol angenrheidiol);

    b. Is-adrannau 8(1)(e) ac 8(3) o Ddeddf Bridio a Gwerthu Cŵn (Lles) 1999 (ac sy'n gwneud y diwygiadau canlyniadol angenrheidiol).

12. Mae'r bwriad i ddiddymu is-adran 1(4)(i) o Ddeddf Bridio Cŵn 1973 ac is-adrannau 8(1)(e) ac 8(3) o Ddeddf Bridio a Gwerthu Cŵn (Lles) 1999 (ynghyd â'r diwygiadau canlyniadol angenrheidiol) a nodir yn y Bil Dadreoleiddio yn gymwys i Loegr a, chyda chaniatâd y Cynulliad, i Gymru.

13. Ar hyn o bryd, mae adran 1(4)(i) o Ddeddf Bridio Cŵn 1973 yn ei gwneud yn ofynnol i'r awdurdod lleol, wrth benderfynu a ddylid rhoi trwydded i sefydliad bridio cŵn ai peidio, ystyried yr angen i sicrhau bod cofnodion cywir yn cael eu cadw. O dan is-adran 8(1)(e) o Ddeddf Bridio a Gwerthu

Cŵn (Lles) 1991, mae, ar hyn o bryd, yn drosedd i geidwad sefydliad bridio trwyddedig werthu i geidwad siop anifeiliaid anwes drwyddedig neu i sefydliad magu yn yr Alban gi nad yw, pan gaiff ei drosglwyddo, yn gwisgo coler ac arno dag neu fathodyn adnabod. O dan is-adran 8(3) o Ddeddf 1991, mae, ar hyn o bryd, yn drosedd i geidwad siop anifeiliaid anwes drwyddedig werthu ci a oedd, pan gafodd ei drosglwyddo iddo, yn gwisgo coler ac arno dag neu fathodyn adnabod ond nad yw'n gwisgo coler o'r fath wrth gael ei drosglwyddo i'r prynwr.

14. Mae deddfwriaeth newydd (a fydd yn disodli'r ddeddfwriaeth bresennol ar fridio ac adnabod cŵn) yn cael ei datblygu yng Nghymru a Lloegr, a fydd, yn ei hanfod, yn ei gwneud yn ofynnol gosod microsglodyn mewn anifail fel y bo modd ei adnabod. Byddai cadw'r gofynion presennol i gadw cofnodion papur ar adnabod cŵn yn dyblygu gofynion, a byddai hefyd yn faich diangen ar fusnesau bach. Er gwybodaeth, nid yw'r ffaith bod y ddeddfwriaeth uchod ar fridio cŵn yn cael ei diddymu yn dileu'r gofyniad i berson sy'n berchen ar gi sicrhau bod gan y ci hwnnw goler ac arno dag adnabod ac y gellir clymu tennyn wrtho.

15. Er gwybodaeth, mae Rheoliadau Lles Anifeiliaid (Bridio Cŵn) (Cymru) 2014 ar fin cael eu gosod a'u gwneud mewn perthynas â Chymru cyn toriad yr haf, a byddant yn dod i rym 6 mis yn ddiweddarach. Mae'r rheoliadau hynny'n cynnwys dulliau adnabod priodol megis yr angen i osod microsglodyn mewn ci cyn iddo adael mangre bridio a'r angen i gadw cofnodion priodol ar fridio cŵn.

16. Ar y sail honno, bernir nad oes bellach angen y darpariaethau'n ymwneud â bridio cŵn sy'n cael eu diddymu gan y diwygiad yn y Bil Dadreoleiddio ac, o'r herwydd, y dylai'r diddymiadau arfaethedig fod yn gymwys mewn perthynas â Chymru.

17. Yr unig beth y mae'r ddarpariaeth uchod yn y Bil Dadreoleiddio yn ei wneud yw diddymu is-adran 1(4)(i) o Ddeddf Bridio Cŵn 1973 ac is-adrannau 8(1)(e) ac 8(3) o Ddeddf Bridio a Gwerthu Cŵn 1999 (a gwneud y diwygiadau canlyniadol angenrheidiol). Nid yw'r ddarpariaeth hon yn y Bil yn rhoi unrhyw bwerau i Weinidogion Cymru wneud is-ddeddfwriaeth.

18. Mae Llywodraeth Cymru o'r farn (i'r graddau y mae'r darpariaethau hyn yn ymwneud â Chymru) bod y darpariaethau hyn o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru i'r graddau y maent yn ymwneud ag Iechyd a Lles Anifeiliaid o dan baragraff 1 o Ran 1 o Atodlen 7 i Ddeddf Llywodraeth Cymru 2006.

Manteision defnyddio'r Bil hwn yn hytrach na deddfwriaeth y Cynulliad

19. Mae Llywodraeth Cymru o'r farn ei bod yn briodol ymdrin â'r darpariaethau hyn yn y Bil hwn gan Senedd y DU gan mai dyma'r dull deddfwriaethol mwyaf priodol a chymesur o alluogi'r darpariaethau hyn i fod yn gymwys mewn perthynas â Chymru. Mae'r diwygiadau

arfaethedig yn rhai technegol ac annadleuol. Hefyd, mae'r cysylltiadau agos rhwng y systemau gweinyddol perthnasol yng Nghymru a Lloegr yn golygu mai'r ffordd fwyaf effeithiol a phriodol o weithredu yw bwrw ymlaen â darpariaethau'r Bil ar gyfer y ddwy wlad ar yr un pryd yn yr un offeryn deddfwriaethol.

Goblygiadau ariannol

20. Nid oes unrhyw oblygiadau ariannol i Lywodraeth Cymru.

Alun Davies AC
Y Gweinidog Cyfoeth Naturiol a Bwyd
Ebrill 2014

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

MEMORANDWM CYDSYNIAD DEDDFWRIAETHOL ATODOL

Y BIL DADREOLEIDDIO: GWELLIANNAU MEWN PERTHYNAS Â DEDDF DALIADAU AMAETHYDDOL 1986, DEDDF BRIDIO CŴN 1973 A DEDDF BRIDIO A GWERTHU CŴN (LLES) 1999

Nodyn Cyngor Cyfreithiol

Cyflwyniad

1. Cyflwynwyd y Bil Dadreoleiddio ("y Bil") yn Nhŷ'r Cyffredin ar 23 Ionawr 2014 ac mae yn y cyfnod adrodd ar hyn o bryd. Penderfynwyd y byddai trafodion y Bil yn cael eu trosglwyddo i'r sesiwn Seneddol nesaf.

2. Gosododd Alun Davies AC, y Gweinidog Cyfoeth Naturiol a Bwyd, Femorandwm Cydsyniad Deddfwriaethol ("Memorandwm") ynghylch y Bil ar 24 Chwefror 2014. Trafododd y Pwyllgor y Memorandwm ar 31 Mawrth 2014. Yn dilyn hynny, gosododd y Pwyllgor ei adroddiad ar y Memorandwm ar 1 Mai 2014.

3. Ar 22 Ebrill 2014, gosododd Alun Davies AM Femorandwm atodol yn sgîl gwelliannau a gyflwynwyd i'r Bil.

Cefndir

4. Amcanion polisi Llywodraeth y DU ar gyfer y Bil yw dileu neu leihau beichiau rheoleiddiol diangen sy'n rhwystro neu'n arwain at gostau i fusnesau, unigolion, gwasanaethau cyhoeddus neu drethdalwyr. Mae'n cynnwys mesurau sy'n ymwneud â meysydd busnes cyffredinol a phenodol sy'n cwmpasu meysydd amrywiol, o adloniant i weinyddu cyfiawnder.

Y Memorandwm Cydsyniad Deddfwriaethol

5. Mae'r Memorandwm atodol yn nodi gwelliannau i'r Bil, a osodwyd yng nghyfnod Pwyllgor y Bil yn Nhŷ'r Cyffredin, sydd o fewn cymhwysedd deddfwriaethol y Cynulliad Cenedlaethol a cheisir ei gydsyniad mewn perthynas â hwy.

Diwygio Deddf Daliadau Amaethyddol 1986

6. Mae Deddf Daliadau Amaethyddol 1986 yn berthnasol i denantiaethau amaethyddol a drefnwyd cyn 1 Medi 1995 a rhai tenantiaethau a drefnwyd ar ôl y dyddiad hwnnw. Mae'n rheoli'r berthynas rhwng y landlord a'r tenant, yn ogystal â rhoi sicrwydd deiliadaeth a hawliau olyniaeth, gan reoleiddio telerau'r denantiaeth a darparu ar gyfer iawndal i'r tenant neu'r landlord o dan rai amgylchiadau.

7. Ar hyn o bryd, mae Deddf Daliadau Amaethyddol 1986 yn darparu tair ffordd o ddatrys anghydfodau rhwng landlordiaid a thenantiaid, gan gynnwys cymrodeddu.

8. Mae'r Memorandwm yn nodi mai cymrodeddu yw'r brif ffordd o ddatrys anghydfodau ar hyn o bryd, a gellir atgyfeirio'r rhan fwyaf o anghydfodau o dan Ddeddf Daliadau Amaethyddol 1986 yn orfodol i gam cymrodeddu.

9. Cytunwyd ar welliannau a gyflwynwyd i'r Bil sy'n ymwneud â Deddf Daliadau Amaethyddol 1986 gan Bwyllgor Biliau Cyhoeddus Tŷ'r Cyffredin ar 25 Mawrth 2014.

10. Byddai'r gwelliannau yn galluogi i'r partïon sy'n rhan o rai anghydfodau o dan Ddeddf Daliadau Amaethyddol 1986, gael eu hatgyfeirio at arbenigwr annibynnol a gyfarwyddir ar y cyd, er mwyn gwneud penderfyniad arnynt drwy drydydd parti yn hytrach na thrwy gymrodeddu. Yn ôl Llywodraeth Cymru, bydd hyn yn sicrhau proses llai ffurfiol, rhatach a chyflymach o ddatrys anghydfodau.

11. Pan gynigiodd y gwelliant yn y Pwyllgor, dywedodd Oliver Heald QC AS, y Cyfreithiwr Cyffredinol, y gallai penderfyniadau o dan y broses newydd arwain at arbedion o hyd at £10,000 i'r partïon ym mhob achos. Dywedodd hefyd fod ffermwyr tenant wedi gofyn am y diwygiad, a bod cefnogaeth gref i'r diwygiad o du'r Grŵp Diwydiant Diwygio Tenantiaethau, sef y grŵp cynghori sy'n cynrychioli landlordiaid a thenantiaid daliadau amaethyddol yng Nghymru a Lloegr.

12. Nid yw'r gwelliannau yn cynnwys unrhyw bwerau i Weinidogion Cymru wneud is-ddeddfwriaeth, ac maent o fewn cymhwysedd deddfwriaethol y Cynulliad i'r graddau y maent yn gymwys i faes Amaethyddiaeth a maes Tai o fewn Atodlen 7 i Ddeddf Llywodraeth Cymru 2006.

Gwelliannau i Ddeddf Bridio Cŵn 1973

13. Mae gofyniad o dan Ddeddf Bridio Cŵn 1973 ar hyn o bryd i safleoedd trwyddedig sy'n bridio cŵn gadw cofnodion ysgrifenedig o'u geist bridio ac unrhyw dorllwythi y byddant yn eu cael.

14. Byddai'r gwelliannau y cytunwyd arnynt gan y Pwyllgor Biliau Cyhoeddus ar 18 Mawrth 2014 yn dileu'r gofyniad hwn.

15. Noda Llywodraeth Cymru mai diben y gwelliant yw lleihau'r baich ar fusnesau bach, gan y bydd yn dyblygu gofynion a geir yn Rheoliadau Lles Anifeiliaid (Bridio Cŵn) (Cymru) 2014, y bwriedir eu gosod a'u gwneud cyn toriad yr haf. Ym mharagraff 15 o'r Memorandwm, noda Llywodraeth Cymru y bydd y rheoliadau'n cynnwys prosesau adnabod priodol, er enghraifft yr angen i gi gael microsglodyn cyn gadael safle bridio a'r angen i gadw cofnodion priodol ar fridio cŵn.

Gwelliannau i Ddeddf Bridio a Gwerthu Cŵn (Lles) 1999

16. O dan Ddeddf Bridio a Gwerthu Cŵn (Lles) 1999, mae'n drosedd i ddeiliad safle bridio trwyddedig werthu ci i ddeiliad siop anifeiliaid anwes drwyddedig neu safle magu trwyddedig yn yr Alban, os nad yw'n gwisgo coler ag arni dag neu fathodyn adnabod pan fo'r ci hwnnw'n cyrraedd y prynwr. Yn yr un modd, mae'n drosedd i berchennog siop anifeiliaid anwes werthu anifail o'r fath.

17. Byddai'r gwelliannau y cytunwyd arnynt gan y Pwyllgor Biliau Cyhoeddus yn dileu'r gofynion hyn.

18. Ym mharagraff 14 o'r Memorandwm, mae Llywodraeth Cymru yn cadarnhau nad yw'r gwelliannau'n dileu'r gofyniad yng Ngorchymyn Rheoli Cŵn 1992 bod unrhyw gi mewn man cyhoeddus yn gwisgo coler ag arni enw a chyfeiriad y perchennog wedi'u hysgrifennu neu'u hysgythru.

19. Yn yr un modd â'r gwelliannau i'r Ddeddf Bridio Cŵn, mae'r Llywodraeth o'r farn bod y darpariaethau'n ddiangen gan mai'r bwriad yw i'r rheoliadau bridio cŵn ei gwneud yn ofynnol i gŵn gael microsglodyn cyn gadael safle bridio beth bynnag, a byddai hynny'n fodd i adnabod y cŵn.

20. Nid oes unrhyw bwerau i Weinidogion Cymru wneud is-ddeddfwriaeth yn Neddf Bridio Cŵn 1973 na Deddf Bridio a Gwerthu Cŵn (Lles) 1999 ac mae'r gwelliannau o fewn cymhwysedd deddfwriaethol y Cynulliad i'r graddau y maent yn ymwneud ag lechyd Anifeiliaid o fewn Atodlen 7 i Ddeddf Llywodraeth Cymru 2006.

Materion i'r Pwyllgor

21. Mae paragraff 19 o'r Memorandwm yn nodi mai mantais defnyddio'r Bil hwn, yn hytrach na deddfwriaeth y Cynulliad, yw mai'r Bil yw'r dull deddfwriaethol mwyaf ymarferol a chymesur o wneud y darpariaethau hyn yn gymwys mewn perthynas â

Chymru. Mae'n nodi, *"The proposed amendments are technical and non-contentious. In addition, the inter-connected nature of the relevant Welsh and English administrative systems mean that it is most effective and appropriate for the Bill provisions to be taken forward at the same time in the same legislative instrument."*

22. Dylid nodi mai'r Ysgrifennydd Gwladol sydd â'r pŵer i gychwyn Atodlenni'r Bil sy'n ymdrin â'r diddymiadau. Ef felly a fydd yn penderfynu pryd y bydd y darpariaethau hynny'n peidio â chael effaith.

23. Yn Lloegr, ni fydd rheoliadau ynghylch microsglodion yn dod i rym tan fis Ebrill 2016, a bydd etholiad cyffredinol cyn hynny.

24. Y drafferth, pan fo'r pŵer yn gyfan gwbl yn nwylo'r Ysgrifennydd Gwladol, yw ei bod yn debygol, o ystyried yr amserlen arfaethedig, y bydd yn dal i fod cyfnod pan fo'n rhaid i fridwyr cŵn a pherchnogion siopau anifeiliaid anwes yng Nghymru gydymffurfio â'r gofynion o dan y rheoliadau bridio cŵn newydd, yn ogystal â gofynion Deddf Bridio Cŵn 1973 a Deddf Bridio a Gwerthu Cŵn (Lles) 1999. Mae perygl hefyd, os bydd amserlen Llywodraeth Cymru ar gyfer y rheoliadau bridio cŵn yn newid, a bod yr Ysgrifennydd Gwladol yn cychwyn Atodlen berthnasol y Bil cyn y daw'r rheoliadau bridio cŵn i rym yng Nghymru, y byddai bwlch yn y gyfraith a fyddai'n galluogi bridwyr cŵn a pherchnogion siopau anifeiliaid anwes i brynu a gwerthu cŵn nad oes modd eu hadnabod nac olrhain eu hanes yn ôl i sefydliadau penodol.

Gwasanaethau Cyfreithiol

Cynulliad Cenedlaethol Cymru

Mai 2014

Eitem 5

MEMORANDWM CYDSYNIAD DEDDFWRIAETHOL

BIL CYMRU

1. Mae'r Memorandwm Cydsyniad Deddfwriaethol hwn yn cael ei osod o dan Reol Sefydlog 29.2. Mae Rheol Sefydlog 29 yn rhagnodi bod rhaid i Femorandwm Cydsyniad Deddfwriaethol gael ei osod, ac y caniateir i Gynnig Cydsyniad Deddfwriaethol gael ei gyflwyno, gerbron Cynulliad Cenedlaethol Cymru os bydd un o Filiau Senedd y Deyrnas Unedig yn gwneud darpariaeth mewn perthynas â Chymru at ddiben sy'n dod o fewn cymhwysedd deddfwriaethol y Cynulliad Cenedlaethol neu sy'n addasu'r cymhwysedd deddfwriaethol hwnnw. Mae'r Bil hwn yn addasu cymhwysedd deddfwriaethol y Cynulliad, yn unol â'r disgrifiad ychwanegol isod. Mae hefyd yn gwneud darpariaeth y mae'n rhaid i Ddatganiad Ysgrifenedig mewn perthynas â hi gael ei osod yn unol â Rheol Sefydlog 30, ac felly dylai'r Memorandwm hwn gael ei ddarllen ar y cyd â'r Datganiad Ysgrifenedig, sydd wedi'i gyflwyno yr un pryd.

2. Cafodd Bil Cymru ("y Bil") ei gyflwyno yn Nhŷ'r Cyffredin ar 20 Mawrth. Mae'r Bil, y gwelliannau a gyflwynwyd iddo a'r Asesiad Effaith ar gael yma:
Bill documents — Wales Bill 2013-14 — UK Parliament

   Mae'r Papur Gorchymyn 'Bil Cymru: Atebolrwydd a Grymuso Ariannol', a gyhoeddwyd ochr yn ochr â Bil Cymru, ar gael yma:
www.gov.uk/government/publications/wales-bill

Crynodeb o'r Bil a'i Amcanion Polisi

3. Noddir y Bil gan Swyddfa Cymru. Amcanion polisi Llywodraeth y Deyrnas Unedig ynglŷn â'r Bil yw peri bod Cynulliad Cenedlaethol Cymru ("y Cynulliad") a Llywodraeth Cymru yn fwy atebol i bobl Cymru am godi'r arian y maent yn ei wario, a gwella system etholiadau'r Cynulliad.

4. Mae i'r Bil bedair rhan:

   - Mae Rhan 1, cymalau 1 i 5, yn gwneud newidiadau i Gynulliad Cenedlaethol Cymru a Llywodraeth Cynulliad Cymru.

   - Mae Rhan 2, cymalau 6 i 22, yn sefydlu trefniadau newydd ynghylch trethi a benthyca. Mae'n datganoli'r cyfrifoldeb dros dreth ar drafodion tir a gwaredu gwastraff i safleoedd tirlenwi, yn creu pwerau benthyca, ac yn creu'r posibilrwydd, yn amodol ar gymeradwyaeth mewn refferendwm, o ostyngiad o 10 ceiniog mewn treth incwm ar draws pob band treth, ynghyd â'r pŵer i'r Cynulliad drwy benderfyniad osod cyfradd treth incwm Gymreig i wneud iawn am y gostyngiad. Mae hefyd yn creu'r posibilrwydd o drethi datganoledig newydd, ac yn rhoi cymhwysedd i ddeddfu ar weithdrefnau'r gyllideb.

   - Mae Rhan 3, cymalau 23 a 24, yn ymdrin â dau fater amrywiol: terfynau ar ddyledion y cyfrif refeniw tai, a'r berthynas rhwng Comisiwn y Gyfraith a sefydliadau datganoledig yng Nghymru.

- Mae Rhan 4, cymalau 25 i 29, yn nodi materion ynglŷn â chychwyn a rhychwant a materion eraill.

- Mae Atodlen 1 yn rhoi manylion am y refferendwm treth, ac mae Atodlen 2 yn ymwneud â diwygiadau o ganlyniad i ddatganoli treth ar drafodion tir.

Y darpariaethau yn y Bil y gofynnir am gydsyniad iddyn nhw

5. Mae'r darpariaethau yn y Bil sy'n addasu cymhwysedd deddfwriaethol y Cynulliad ac y gofynnir am gydsyniad iddyn nhw i'w gweld yng nghymalau 6, 7, 14, 17 ac 21.

Cymal 6: Trethu: rhagarweiniol

6. Mae Cymal 6 yn mewnosod Rhan 4A newydd (ac iddi bedair Pennod) yn Neddf Llywodraeth Cymru 2006 ("Deddf 2006") er mwyn addasu cymhwysedd y Cynulliad i ddarparu pwerau ariannol dros drethi sydd wedi'u datganoli'n llawn.

7. Mae'r cymal yn disgrifio strwythur y Rhan 4A newydd, yn diffinio "trethi wedi'u datganoli" ac yn darparu'r Bennod 1 ragarweiniol. Mae'n esbonio y câi cymhwysedd deddfwriaethol y Cynulliad ei addasu drwy ei alluogi i wneud y canlynol:

    - cyflwyno treth ddatganoledig newydd ar drafodion yn ymwneud â buddiannau mewn tir (Rhan 4 Pennod 3 – yr ymdrinnir â hi isod o dan Gymal 14);

    - cyflwyno treth ddatganoledig newydd ar waredu gwastraff i safleoedd tirlenwi (Rhan 4 Pennod 4 – yr ymdrinnir â hi isod o dan Gymal 17).

8. Pe bai'r Cynulliad yn penderfynu sefydlu corff i gasglu a rheoli ei drethi datganoledig, byddai Cymal 6 (adran 116B) yn rhoi cymhwysedd deddfwriaethol i'r Cynulliad i benodi gweision sifil i'r corff hwnnw, ar yr amod bod eu swyddogaethau'n ymwneud â chasglu a rheoli trethi datganoledig a/neu faterion cyllid llywodraeth leol. Ni waeth i bwy y byddai'r Cynulliad yn rhoi'r pŵer i benodi'r gweision sifil hynny, Gweinidogion Cymru fyddai'n talu costau eu penodi.

9. Gall newidiadau i'r rhan 4A newydd, gan gynnwys datganoli trethi datganoledig ychwanegol i Gymru, gael eu diwygio drwy Orchymyn yn y Cyfrin Gyngor, er y byddai hynny'n amodol ar y weithdrefn penderfyniad cadarnhaol yn y Cynulliad ac yn nau Dŷ'r Senedd cyn y gallai ddod yn gyfraith.

10. Byddai Cymal 6 yn diwygio'r cymhwysedd deddfwriaethol i sicrhau na fyddai'r eithriadau presennol (sy'n cynnwys, er enghraifft, yswiriant cerbydau modur) yn atal darpariaethau ynghylch trethi ar y materion hynny, pe bai Gorchymyn yn cael ei wneud yn y dyfodol i ddatganoli trethi ychwanegol i Gymru.

Cymal 7: Gwelliannau ynglŷn â'r Comisiynwyr Cyllid a Thollau

11. Mae Cymal 7 yn cynnwys gwelliannau i Rannau 2 a 3 o Atodlen 7 i Ddeddf 2006 i ganiatáu i'r Cynulliad, gyda chydsyniad Trysorlys EM, ddileu neu addasu swyddogaethau CThEM pan fo'r swyddogaethau hynny'n ymwneud â threthi datganoledig.

Cymal 14: Treth Gymreig ar drafodion ynglŷn â buddiannau mewn tir

12. Ar hyn o bryd mae treth dir y doll stamp yn daladwy wrth brynu neu drosglwyddo eiddo neu dir yn y Deyrnas Unedig os yw'r swm a dalwyd uwchben trothwy penodol (mae'r Alban wedi'i hepgor gan Ddeddf yr Alban 2012, er nad yw'r gwelliannau hynny wedi dod i rym eto). Byddai Cymal 14 yn caniatáu i'r Cynulliad gyflwyno ei dreth trafodion tir ei hun, ac mae'n cyplysu cyflwyno'r dreth Gymreig newydd â datgymhwyso treth dir y doll stamp yng Nghymru.

13. Mae Cymal 14 yn cynnwys Pennod 3 o'r Rhan 4a newydd i'w mewnosod yn Neddf 2006 sy'n disgrifio'r dreth a phryd y gallai fod yn daladwy. Mae hefyd yn rhestru'r rhai a fyddai'n esempt rhag talu'r dreth:

    - yn y Llywodraeth: un o Weinidogion y Goron; Gweinidogion Cymru, Prif Weinidog Cymru a'r Cwnsler Cyffredinol; Gweinidogion yr Alban; ac un o adrannau Gogledd Iwerddon; a

    - yn y Senedd: Swyddog Corfforaethol Tŷ'r Arglwyddi; Swyddog Corfforaethol Tŷ'r Cyffredin; Comisiwn y Cynulliad; Corff Corfforaethol Senedd yr Alban; a Chomisiwn Cynulliad Gogledd Iwerddon.

Cymal 17: Treth Gymreig ar wastraff a waredir i safleoedd tirlenwi

14. Ar hyn o bryd mae treth dirlenwi yn cael ei chodi am waredu gwastraff i safleoedd tirlenwi yng Nghymru a Lloegr neu yng Ngogledd Iwerddon (mae tirlenwi yn yr Alban wedi'i hepgor gan Ddeddf yr Alban 2012, er nad yw'r gwelliannau hynny wedi dod i rym eto). Mae Cymal 17 yn darparu'r mecanwaith i ganiatáu i'r Cynulliad gyflwyno'i dreth ei hun ar waredu gwastraff i safleoedd tirlenwi.

15. Mae Cymal 17 yn cyflwyno Pennod 4 newydd yn Rhan 4A o Ddeddf 2006, sy'n nodi cwmpas pŵer Llywodraeth Cymru i gyflwyno treth ar waredu gwastraff i safleoedd tirlenwi yng Nghymru. Mae adran 116N(1) yn darparu y byddai treth a gâi ei chodi am waredu gwastraff i safleoedd tirlenwi yng Nghymru yn dreth ddatganoledig ac mae adran 116N(2) yn esbonio pa bryd y mae gwarediad yn warediad i safle tirlenwi. Mae is-adran (2) yn sicrhau na ellid codi'r dreth ddatganoledig ar warediadau y byddai treth dirlenwi'r Deyrnas Unedig yn gymwys iddynt, gan gyplysu cychwyn y dreth ddatganoledig newydd â datgymhwyso treth dirlenwi'r Deyrnas Unedig yng Nghymru.

Cymal 21: Gweithdrefnau'r gyllideb

16. Byddai Cymal 21 yn rhoi cymhwysedd i'r Cynulliad i ddeddfu ar gyfer ei weithdrefnau cyllideb ei hun drwy fewnosod hyn fel pwnc newydd ym mharagraff 13 o Ran 1 o Atodlen 7 i Ddeddf 2006. Mae is-adran (2) o'r cymal hefyd yn diffinio beth yw gweithdrefnau cyllideb.

17. Byddai'r cymal yn galluogi'r Cynulliad i ddeddfu mewn perthynas â gweithdrefnau ar gyfer craffu ar gyllideb flynyddol Gweinidogion Cymru, "personau perthnasol" eraill ac unrhyw gorff arall a fyddai'n derbyn taliadau o Gronfa Gyfunol Cymru yn rhinwedd deddfiad (gan y Senedd neu gan y Cynulliad) ac mewn perthynas â phennu'r gyllideb

honno. Er enghraifft, byddai'n caniatáu i'r Cynulliad basio Deddf Cyllid flynyddol yn lle'r cynnig cyllideb blynyddol cyfredol.

18. Gan y byddai gan y Cynulliad gymhwysedd ynglŷn â threthi datganoledig hefyd (h.y. trafodion yn ymwneud â buddiannau mewn tir, a gwaredu gwastraff i safleoedd tirlenwi), gallai gweithdrefnau'r gyllideb gynnwys penderfynu ar y cyfraddau treth mewn perthynas â'r trethi hyn, rhagolygon ynglŷn â derbyniadau treth, amrywiannau, benthyca at ddibenion cyfredol a dibenion cyfalaf a symiau ar gyfer ad-dalu benthyciadau, yn ogystal ag awdurdodi faint y câi "personau perthnasol" (a ddiffinnir yn y Bil) ei wario.

19. Er mwyn deddfu ar gyfer gweithdrefnau cyllideb newydd, mae Rhan 2 o Atodlen 7 i Ddeddf 2006 wedi'i diwygio gan is-adran (3) o Gymal 21 i ganiatáu i'r Cynulliad addasu'r adrannau hynny yn Neddf 2006 sy'n cyfeirio at broses bresennol y cynnig cyllideb – h.y. adrannau 119 (i'r graddau y mae'n ymwneud â'r amcangyfrif o daliadau a ddisgrifir ac nid â dyletswydd yr Ysgrifennydd Gwladol yn is-adran (3) o'r adran honno), 120(2), a 125 i 128. Gan y gall fod angen hefyd i'r Cynulliad wneud addasiadau cyfyngedig i ddarpariaethau eraill yn Rhan 5 o Ddeddf 2006, mae is-adran (3) yn mewnosod is-baragraff newydd ym mharagraff 5 o Ran 2 o Atodlen 7 sy'n galluogi Deddf Cynulliad i wneud diwygiadau i adrannau eraill yn Rhan 5 neu yn adran 159 o Ddeddf 2006 ar yr amod eu bod (a) yn atodol i ddarpariaethau mewn Deddf Cynulliad sy'n ymwneud â gweithdrefnau cyllideb neu drethi datganoledig neu'n ganlyniadol i ddarpariaethau o'r fath, a (b) wedi sicrhau cydsyniad yr Ysgrifennydd Gwladol.

20. Pe bai refferendwm yn penderfynu y dylid datganoli pwerau i amrywio cyfraddau treth incwm i Gymru, mater i'r Cynulliad fyddai penderfynu a ddylai penderfyniad y Cynulliad i bennu cyfradd Gymreig y dreth incwm gael ei ystyried fel rhan o weithdrefnau'r gyllideb neu beidio.

Y sail resymegol dros ddefnyddio Bil y Deyrnas Unedig

21. Ym marn Llywodraeth Cymru, mae'n briodol ymdrin â'r darpariaethau hyn yn y Bil hwn ar lefel y Deyrnas Unedig am na allai'r darpariaethau gael eu gwneud drwy Ddeddf Cynulliad. Nid yw'r darpariaethau o fewn cymhwysedd deddfwriaethol y Cynulliad ar hyn o bryd, ond yn hytrach maent yn addasu'r cymhwysedd hwnnw drwy ei ymestyn at y dyfodol. Mae'r darpariaethau yn rhoi nifer o argymhellion adroddiad Rhan 1 Comisiwn Silk ar waith, sef argymhellion y mae Llywodraeth Cymru wedi'u derbyn yn eu cyfanrwydd.

Y goblygiadau ariannol

22. Mae trafodaethau yn mynd rhagddynt rhwng Llywodraeth Cymru a Llywodraeth y Deyrnas Unedig ynghylch cost gweithredu'r diwygiadau ariannol a geid drwy'r mesurau sydd wedi'u cynnwys yn y Bil.

23. Ochr yn ochr â chyflwyno'r trethi Cymreig newydd (yn Ebrill 2018), byddai Trysorlys EM yn gostwng grant bloc Cymru i adlewyrchu pwerau newydd Llywodraeth Cymru i godi refeniw. Mae trafodaethau yn mynd rhagddynt i gytuno beth fyddai lefel y gostyngiad hwn.

24. Gan mai cyllideb Cymru fyddai'n ysgwyddo'r anwadalrwydd a gâi ei greu yn y refeniw o drethi wedi'u datganoli'n llawn, mae Bil Cymru yn rhoi'r gallu i Lywodraeth Cymru i fenthyca yn y tymor byr er mwyn rheoli'r anwadalrwydd hwn. Mater sy'n cael ei drafod ar hyn o bryd gyda Thrysorlys EM yw sut i weithredu'r system ariannu gyffredinol, y byddai refeniw o'r trethi datganoledig yn rhyngweithio ynddi â'r grant bloc ac â phwerau benthyca.

25. Ni ddisgwylir y byddai i'r pwerau benthyca newydd – i reoli anwadalrwydd neu at ddibenion buddsoddi cyfalaf – orbenion gweinyddol sylweddol.

26. Mae Llywodraeth y Deyrnas Unedig wedi dweud mai Llywodraeth Cymru a fyddai'n ysgwyddo unrhyw gostau ychwanegol ynglŷn â sefydlu trethi Cymreig newydd ar drafodion yn ymwneud â buddiannau mewn tir ac ar waredu gwastraff i safleoedd tirlenwi (yn net arbedion i Lywodraeth y Deyrnas Unedig am na fyddai mwyach yn casglu nac yn gweinyddu treth stamp y Deyrnas Unedig na threth dirlenwi'r Deyrnas Unedig yng Nghymru). Er hynny, byddai'n gweithio'n adeiladol gyda Llywodraeth Cymru i leihau gymaint â phosibl ar unrhyw gostau o'r fath.

27. O gael pleidlais "Ie" mewn refferendwm i gyflwyno cyfradd treth incwm Gymreig newydd, mae Llywodraeth y Deyrnas Unedig o'r farn mai Llywodraeth Cymru a ddylai ysgwyddo'r costau perthynol. Does dim trafod wedi bod gyda Llywodraeth y Deyrnas Unedig ynglŷn â'r costau hyn, ond yn ei Hasesiad Effaith ynglŷn â Bil Cymru, mae Llywodraeth y Deyrnas Unedig yn dweud yr amcangyfrifwyd bod diweddaru systemau TG a phrosesau gweinyddol CThEM i ategu'r newidiadau mewn pwerau treth incwm a gafwyd yn sgil Deddf yr Alban wedi costio tua £40-45 miliwn, ynghyd â chostau rhedeg blynyddol o ryw £4.2 miliwn. Er y gallai'r boblogaeth lai, a'r gwersi a ddysgwyd yn sgil y gwaith ar ran yr Alban helpu i leihau'r costau gweithredu yng Nghymru, mae Llywodraeth y Deyrnas Unedig yn nodi y gallai ffactorau eraill arwain at gynyddu'r costau, gan gynnwys y gweithgarwch economaidd ehangach ar y ffin rhwng Cymru a Lloegr (a allai gynyddu nifer yr ymholiadau), yr angen i ehangu gallu llinell gymorth Gymraeg CThEM, a'r costau cydymffurfio ychwanegol a fyddai'n gysylltiedig ag ymdrin â rhai cynlluniau rhyddhad treth ac incwm megis Rhodd Cymorth a'r rhyddhad treth ar gyfer cynlluniau pensiwn.

Jane Hutt AC
Y Gweinidog Cyllid
Mai 2014

Llywodraeth Cymru
Welsh Government

DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU

TEITL **Bil Cymru**

DYDDIAD **01 Mai 2014**

GAN **Jane Hutt, Y Gweinidog Cyllid**

Cafodd Bil Cymru ei gyflwyno yn Nhŷ'r Cyffredin ar 20 Mawrth 2014. Cafodd y Bil ei gyhoeddi'n wreiddiol ar ffurf drafft ar 18 Rhagfyr 2013 at ddibenion craffu cyn deddfu. Cyflwynodd y Pwyllgor Materion Cymreig adroddiad ar y Bil drafft ar 28 Chwefror 2014.

Mae'r datganiad ysgrifenedig hwn yn cael ei osod o dan Reol Sefydlog 30 – Hysbysu mewn perthynas â Biliau Senedd y Deyrnas Unedig. Mae'n ymwneud â darpariaethau yn y Bil sy'n addasu swyddogaethau Gweinidogion Cymru, ond nad oes angen Cynnig Cydsyniad Deddfwriaethol ar eu cyfer o dan Reol Sefydlog 29.

Yr amcanion polisi sydd wedi'u datgan gan Lywodraeth y Deyrnas Unedig ynglŷn â'r Bil yw peri bod Cynulliad Cenedlaethol Cymru ("y Cynulliad") a Llywodraeth Cymru yn fwy atebol i bobl Cymru am godi'r arian y maent yn ei wario, a gwella system etholiadau'r Cynulliad

Er hwylustod wrth gyfeirio atynt, mae'r darpariaethau sy'n addasu swyddogaethau Gweinidogion Cymru'n cael eu disgrifio yn y drefn y gwelir hwy yn y Bil, sef cymalau 6, 8, 12, 16, 19, 20, 22, 23, 24 ac Atodlen 1.

Cymal 6 – Trethu: rhagarweiniol

Cymal 6 sy'n darparu'r strwythur y caiff Llywodraeth Cymru ddeddfu o'i fewn ynglŷn â threth. Mae Cymal 6 yn cyflwyno adran 116B newydd yn Neddf Llywodraeth Cymru 2006 ("Deddf 2006"). Mae isadrannau (5), (6) a (7) yn darparu y byddai'n rhaid i Weinidogion Cymru dalu cyflogau, treuliau a phensiynau'r gweision sifil hynny, pe bai'r Cynulliad yn penodi gweision sifil i gorff y byddai'n ei sefydlu i gasglu a rheoli trethi datganoledig.

Cymal 8 – cyfradd treth incwm Gymreig

Mae Cymal 8 yn ymdrin â chyfradd treth incwm Gymreig. Mae is-adran (1) yn mewnosod Pennod 2 yn y Rhan 4A newydd o Ddeddf 2006, sef adrannau 116D i 116K. Mae'r adran 116D newydd yn rhoi pŵer i'r Cynulliad i osod, drwy benderfyniad, gyfradd treth incwm

Gymreig, i drethdalwyr yng Nghymru. Mae adran 116D(8) yn ei gwneud yn ofynnol i Reolau Sefydlog y Cynulliad sicrhau mai dim ond Prif Weinidog Cymru neu un o Weinidogion Cymru a gaiff wneud y cynnig ar gyfer penderfyniad ar gyfradd treth incwm Gymreig.

Mae'r adran 116J newydd yn darparu y caiff Gweinidogion Cymru roi ad-daliad i unrhyw un o Weinidogion y Goron neu i unrhyw adran o Lywodraeth y Deyrnas Unedig, er enghraifft CThEM, am gostau gweinyddol a ysgwyddir wrth sefydlu cyfradd treth incwm Gymreig.

Cymal 12 – Cynnig ynglŷn â refferendwm gan y Cynulliad

Mae Cymal 12 yn darparu'r mecanwaith y caiff y Cynulliad sbarduno refferendwm ar sefydlu gyfradd treth incwm Gymreig drwyddo. Mae is-adrannau (1) a (2) yn pennu y caiff Prif Weinidog Cymru neu un o Weinidogion Cymru gynnig penderfyniad yn y Cynulliad y dylid gwneud argymhelliad i'w Mawrhydi yn y Cyfrin Gyngor i wneud Gorchymyn sy'n peri i refferendwm gael ei gynnal. Os caiff y penderfyniad hwnnw ei basio gan o leiaf ddwy ran o dair o Aelodau'r Cynulliad, yna rhaid i Brif Weinidog Cymru roi hysbysiad i'r Ysgrifennydd Gwladol cyn gynted ag y bo'n ymarferol.

Os na osodir Gorchymyn o fewn 180 diwrnod ôl i'r Ysgrifennydd Gwladol gael llythyr Prif Weinidog Cymru, yna rhaid i'r Ysgrifennydd Gwladol ysgrifennu at Brif Weinidog Cymru i ddatgan hynny a rhoi rhesymau dros beidio â gwneud hynny. Mae is-adran (4) yn ei gwneud yn ofynnol i Brif Weinidog Cymru osod copi o'r hysbysiad hwnnw gerbron y Cynulliad.

Cymal 16 – Gwybodaeth am drafodion tir yng Nghymru

Mae Cymal 16 yn darparu ar gyfer rhoi gwybodaeth i CThEM am drafodion tir yng Nghymru. Mae is-adran (1) yn mewnosod adran 116M newydd ym Mhennod 3 o Ran 4A o Ddeddf 2006 gan osod dyletswydd i ddarparu gwybodaeth benodol i CThEM am drafodion tir yng Nghymru. Mae adran 116M(1) yn darparu bod rhaid i Lywodraeth Cymru roi unrhyw wybodaeth y mae CThEM yn gofyn amdani i CThEM, pan ofynnir iddynt wneud hynny, gan ei bod yn bosibl na fyddai'r wybodaeth hon ar gael i CThEM mwyach drwy ffurflenni trafodion tir. Mae gweddill is-adrannau Cymal 116 yn diffinio'r wybodaeth a fyddai'n angenrheidiol at y diben hwn a sut y dylai gael ei darparu.

Cymal 19 – Benthyciadau gan Weinidogion Cymru

Mae Cymal 19 yn diwygio adrannau 121 a 122 o Ddeddf 2006, ac yn mewnosod adran 122A newydd, i ddiwygio'r amgylchiadau y caiff Gweinidogion Cymru fenthyca odanynt ac i nodi'r prif reolaethau a'r prif derfynau ar fenthyciadau o'r fath. Mae'r cymal yn galluogi Gweinidogion Cymru i fenthyca, yn ddarostyngedig i reolaethau a therfynau Trysorlys EM, er mwyn:

- rheoli anwadalrwydd derbyniadau yn ystod y flwyddyn, lle mae incwm gwirioneddol y mis yn wahanol i'r derbyniadau a ragwelwyd ar gyfer y mis hwnnw;
- darparu balans gweithio yng Nghronfa Gyfunol Cymru er mwyn rheoli'r llif arian;
- ymdrin â gwahaniaethau rhwng rhagolwg y flwyddyn gyfan a'r derbyniadau alldro ynglŷn â threthi datganoledig; ac

- ariannu gwariant cyfalaf.

Mae is-adran 19(3) yn disodli is-adran (1) yn adran 121 o Ddeddf Llywodraeth Cymru:
- gan ailddeddfu gallu Gweinidogion Cymru i fenthyca dros dro oddi wrth Ysgrifennydd Gwladol Cymru i ddarparu balans gweithio yng Nghronfa Gyfunol Cymru ac i reoli anwadalrwydd derbyniadau yn ystod y flwyddyn; a
- gan ymestyn pwerau benthyca presennol Gweinidogion Cymru i gynnwys benthyca oddi wrth yr Ysgrifennydd Gwladol ar draws blynyddoedd er mwyn ariannu gwahaniaethau rhwng rhagolwg y flwyddyn lawn a derbyniadau alldro trethi datganoledig.

Mae is-adran (3) hefyd yn ychwanegu dwy is-adran newydd yn adran 121((1A) ac (1B)). Byddai is-adran (1A) yn galluogi Gweinidogion Cymru i fenthyca er mwyn ariannu gwariant cyfalaf, yn amodol ar gymeradwyaeth gan Drysorlys EM. Rhaid i'r benthyciad fod ar ffurf benthyciad naill ai o'r Gronfa Benthyciadau Cenedlaethol (drwy'r Ysgrifennydd Gwladol) neu oddi wrth fenthyciwr arall, megis banc masnachol. Mae'r is-adran newydd yn ei gwneud yn ofynnol i Weinidogion Cymru fenthyca ar ffurf benthyciad, ac ni chaniateir iddynt ddyroddi giltiau na bondiau Cymreig.

Mae is-adran (10) yn mewnosod adran 122A newydd yn Neddf 2006 sy'n cynnwys darpariaethau ychwanegol ynglŷn â benthyca cyfalaf. Mae adran 122A(5), (6) a (7) yn cynnwys rheolau ychwanegol ar fenthyciadau Gweinidogion Cymru i ariannu gwariant cyfalaf. Mae is-adran (6) yn datgan bod Gweinidogion Cymru wedi'u gwahardd rhag morgeisio unrhyw eiddo neu osod arwystl arno fel gwarant am arian y maen nhw wedi'i fenthyg (ond nid yw hyn yn effeithio ar y rheol yn adran 121(3) o Ddeddf 2006 fod benthyciadau i'w codi ar Gronfa Gyfunol Cymru).

Cymal 20 – Diddymu'r pŵer benthyca presennol

Mae Cymal 20 yn diwygio Deddf Awdurdod Datblygu Cymru 1975, gan ddiddymu'r pŵer i fenthyca a roddodd y ddeddf honno i Weinidogion Cymru, a thrwy hynny mae'n dileu un o swyddogaethau Gweinidogion Cymru.

Mae is-adran (1) yn diddymu paragraff 3 (pŵer i Weinidogion Cymru fenthyca arian) a pharagraff 6 (pŵer i Drysorlys EM warantu arian a fenthycir o dan baragraff 3) yn Atodlen 3 i Ddeddf Awdurdod Datblygu Cymru 1975. Mae is-adran (2) yn datgan nad yw'r diddymiadau yn is-adran (1) yn effeithio ar atebolrwydd parhaus Gweinidogion Cymru i ad-dalu arian a fenthycwyd yn flaenorol o dan baragraff 3, nac ar unrhyw warant a roddwyd o'r blaen gan Drysorlys EM o dan baragraff 6.

Cymal 22 – Adroddiadau ar roi'r Rhan hon ar waith a sut mae'n gweithredu

Mae Cymal 22 yn nodi'r gofynion bod rhaid i'r Ysgrifennydd Gwladol a Gweinidogion Cymru gyflwyno adroddiad ynglŷn â rhoi'r darpariaethau ariannol newydd a nodir yn Rhan 2 o Fil Cymru ar waith a sut mae'r darpariaethau ariannol hynny'n gweithredu.

Mae Cymal 22(1) a (3) yn ei gwneud yn ofynnol i'r Ysgrifennydd Gwladol gyhoeddi adroddiad ynglŷn â rhoi'r darpariaethau ariannol yn Rhan 2 ar waith a sut mae'r darpariaethau hynny'n gweithredu o fewn blwyddyn ar ôl i'r Ddeddf gael ei phasio a phob blwyddyn wedyn cyn pen-blwydd pasio'r Ddeddf. Mae is-adran (4) yn datgan bod rhaid i'r adroddiadau hyn barhau tan flwyddyn ar ôl i'r pwerau trethu a'r pwerau benthyca gael eu trosglwyddo'n llawn i'r Cynulliad a Gweinidogion Cymru. Rhaid gosod copïau o'r adroddiadau gerbron dau Dŷ'r Senedd a'u hanfon at Weinidogion Cymru, y mae'n rhaid iddyn nhw osod yr adroddiadau gerbron y Cynulliad

Mae is-adrannau (2) a (3) yn ei gwneud yn ofynnol i Weinidogion Cymru lunio a gosod gerbron y Cynulliad adroddiadau o'r un math ac at yr un amserlen, a rhoi copi o bob adroddiad i'r Ysgrifennydd Gwladol i'w osod gerbron dau Dŷ'r Senedd.

Mae is-adrannau (5) a (6) yn nodi sut y penderfynir bod un o ddarpariaethau Rhan 2 yn cael ei rhoi ar waith er mwyn penderfynu pa mor hir y mae'n rhaid i'r adroddiadau barhau, ac mae is-adran (7) yn nodi'r meysydd y mae'n rhaid i bob adroddiad eu cynnwys.

Cymal 23 – Awdurdodau tai lleol: terfynau ar ddyled y cyfrif refeniw tai

Mae is-adran (1) yn diwygio Rhan 6 (Cyllid Tai) o Ddeddf Llywodraeth Leol a Thai 1989 ("Deddf 1989"), o ran sut y byddai'r Rhan honno o Ddeddf 1989 yn berthnasol yng Nghymru. Wrth wneud hynny, mae'r ddarpariaeth newydd yn adlewyrchu effaith adrannau 171 i 173 o Ddeddf Lleoliaeth 2011 sy'n gymwys yn Lloegr yn unig.

Mae is-adran (2) yn cyflwyno adran 76A newydd (Terfynau ar ddyledion) yn Neddf 1989. Mae adran 76A yn rhoi pwerau: (i) i Drysorlys EM i wneud penderfyniad sy'n darparu ar gyfer uchafswm y ddyled tai y caniateir ei chynnal, ar y cyd, gan Awdurdodau Tai Lleol ("LHAs") yng Nghymru sydd â chyfrif refeniw tai, a (ii) i Weinidogion Cymru i benderfynu ar swm y ddyled tai y mae'n rhaid trin LHA unigol fel pe bai'n ei chynnal ac uchafswm y ddyled tai o'r fath y caniateir i LHA ei chynnal. Mae adran 76A yn ei gwneud yn ofynnol i Weinidogion Cymru wneud penderfyniad ynglŷn â phob LHA o fewn cyfnod amser o 6 mis sy'n dechrau y diwrnod ar ôl i Drysorlys EM wneud penderfyniad. Rhaid i gyfanswm y symiau o ddyled a gynhelir gan bob LHA beidio â bod yn fwy na "chap Cymru gyfan" a bennir ym mhenderfyniad Trysorlys EM. Hefyd byddai'n anghyfreithlon i LHA fynd y tu hwnt i'w derfyn benthyca unigol.

Mae is-adran (2) hefyd yn cyflwyno adran 76B newydd (pŵer i sicrhau gwybodaeth) yn Neddf 1989. Mae adran 76B yn rhoi pwerau newydd i Weinidogion Cymru i sicrhau gwybodaeth sy'n galluogi Gweinidogion Cymru i gyflawni eu swyddogaethau o dan adran 76A. Mae adran 76B yn gosod dyletswydd ar bob awdurdod tai lleol i roi gwybodaeth a thystysgrifau sy'n ategu'r wybodaeth hon i Weinidogion Cymru.

Mae is-adrannau (3) i (7) yn gwneud mân newidiadau i adran 87 o Ddeddf 1989.

Cymal 24 - Gwaith Comisiwn y Gyfraith i'r graddau y mae'n ymwneud â Chymru

Mae Cymal 24 yn mewnosod darpariaethau newydd yn Neddf Comisiynau'r Gyfraith 1965 ("Deddf 1965") er mwyn gosod dyletswydd newydd ar Gomisiwn y Gyfraith i roi gwybodaeth a chyngor yn uniongyrchol i Weinidogion Cymru. Mae'n egluro y byddai Gweinidogion Cymru'n gallu cyfeirio materion diwygio'r gyfraith at Gomisiwn y Gyfraith eu hunain.

Mae Cymal 24(4) yn mewnosod adran 3C newydd yn Neddf 1965 i ddarparu bod rhaid i Weinidogion Cymru lunio adroddiad blynyddol i'w osod gerbron y Cynulliad. Rhaid i'r adroddiad gynnwys manylion unrhyw gynigion gan Gomisiwn y Gyfraith sy'n ymwneud â materion Cymreig sydd wedi'u datganoli ac sydd naill ai wedi'u gweithredu ers yr adroddiad diwethaf neu sydd eto i'w gweithredu. Os cafwyd cynigion yn y flwyddyn flaenorol sydd eto i'w gweithredu, rhaid i adroddiad Gweinidogion Cymru gynnwys cynlluniau ar gyfer gweithredu, unrhyw benderfyniad i beidio â gweithredu, a'r rhesymau dros unrhyw benderfyniad o'r fath. Os nad oes cynigion gan Gomisiwn y Gyfraith sydd heb eu cwblhau ynglŷn â materion Cymreig sydd wedi'u datganoli yn y flwyddyn ers yr adroddiad blaenorol, ni fydd yn ofynnol i Weinidogion Cymru lunio adroddiad i'r Cynulliad

Mae is-adran (4) hefyd yn darparu ar gyfer protocol ynghylch gwaith Comisiwn y Gyfraith o ran Cymru, i'w gytuno rhwng Comisiwn y Gyfraith a Gweinidogion Cymru at ddibenion gwaith Comisiwn y Gyfraith ynglŷn â materion Cymreig sydd wedi'u datganoli. O fwrw ymlaen â phrotocol, rhaid i Weinidogion Cymru a Chomisiwn y Gyfraith ei adolygu o dro i dro a rhaid i Weinidogion Cymru osod y protocol (ac unrhyw ddiwygiadau iddo) gerbron y Cynulliad. Rhaid i Weinidogion Cymru a Chomisiwn y Gyfraith roi sylw i'r protocol.

Yn olaf, mae is-adran (5) o Gymal 24 yn gwneud mân ddiwygiad i adran 5(4) o Ddeddf 1965 sy'n egluro y byddai Gweinidogion Cymru'n gallu talu am wasanaethau Comisiwn y Gyfraith.

Atodlen 1 – Refferendwm ynghylch cychwyn y darpariaethau treth incwm

Mae Atodlen 1 yn nodi fframwaith ar gyfer cynnal refferendwm ynghylch dod â'r darpariaethau treth incwm i rym. Yn unol â Deddf Pleidiau Gwleidyddol, Etholiadau a Refferenda 2000, mae'n ofynnol i'r Ysgrifennydd Gwladol ymgynghori â'r Comisiwn Etholiadol ynghylch eglurder y cwestiwn refferendwm sydd i'w gynnwys ar y papur pleidleisio. Rhaid i'r Ysgrifennydd Gwladol anfon copi o'r adroddiad, gan gynnwys barn y Comisiwn, fel y'i gosodwyd yn y Senedd at Brif Weinidog Cymru. Mae paragraff 3(4) o Atodlen 1 yn nodi bod rhaid i Brif Weinidog Cymru osod copi ohono gerbron y Cynulliad, cyn gynted ag y bo'n ymarferol ar ôl iddo gael yr adroddiad.

Rhaid i Orchymyn sy'n caniatáu ar gyfer cynnal refferendwm bennu dyddiad y bleidlais. Mae paragraff 4(2) yn nodi y caiff yr Ysgrifennydd Gwladol (neu Arglwydd Lywydd y Cyfrin Gyngor) amrywio'r dyddiad hwnnw, drwy orchymyn, os yw'n ymddangos ei bod yn amhriodol ei gynnal ar y dyddiad hwnnw. Serch hynny, rhaid i Weinidogion Cymru gydsynio i orchymyn o'r fath gael ei wneud.

Y sail resymegol dros gynnwys y darpariaethau hyn yn y Bil hwn ar lefel y Deyrnas Unedig

Mae Llywodraeth Cymru o'r farn ei bod yn briodol i'r darpariaethau hyn gael eu gwneud, a'u gwneud drwy gyfrwng Bil Cymru, am na allai'r darpariaethau gael eu gwneud drwy Ddeddf Cynulliad.

Mae'r rhan fwyaf o'r darpariaethau a gynhwyswyd uchod yn cydategu'r cymhwysedd deddfwriaethol ehangach ynglŷn â threthi datganoledig sy'n cael ei roi i'r Cynulliad a'r pwerau benthyca sy'n cael eu rhoi i Weinidogion Cymru drwy gyfrwng Bil Cymru, neu mae eu hangen er mwyn i'r darpariaethau eraill i weithio'n effeithiol.

Ar gais Llywodraeth Cymru y cafodd y cymal yn y Bil ynglŷn â Chomisiwn y Gyfraith ei gynnwys.

Mae Cymal 23 ynglŷn â'r terfynau ar ddyledion y cyfrif refeniw tai yn adlewyrchu rhan hanfodol o'r cytundeb a wnaed rhwng Trysorlys EM a Gweinidogion Cymru, a bydd yn galluogi awdurdodau tai lleol Cymru i ymadael â system bresennol Cymhorthdal y Cyfrif Refeniw Tai.

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

MEMORANDWM CYDSYNIAD DEDDFWRIAETHOL - BIL CYMRU

Nodyn Cyngor Cyfreithiol

Cefndir

1. Ar 1 Mai 2014, gosododd Jane Hutt AC, y Gweinidog Cyllid, Femorandwm Cydsyniad Deddfwriaethol ("y Memorandwm") ynghylch Bil Cymru ("y Bil") yn unol â Rheol Sefydlog 29.2. Cafodd datganiad ysgrifenedig sy'n ofynnol o dan Reol Sefydlog 30 hefyd ei osod ar 1 Mai, gan nodi'r addasiadau i swyddogaethau Gweinidogion Cymru sydd y tu allan i gymhwysedd deddfwriaethol y Cynulliad, ac felly nad ydynt yn ymwneud â'r Memorandwm.

2. Cafodd y Memorandwm ei drafod ar 6 Mai 2014 gan y Pwyllgor Busnes, a gytunodd i'w gyfeirio at y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol a'r Pwyllgor Cyllid. Mae'n rhaid i'r Pwyllgorau gyflwyno adroddiad i'r Cynulliad erbyn 26 Mehefin 2014 fel y gellir trafod y Cynnig Cydsyniad Deddfwriaethol yn y Cyfarfod Llawn ar 1 Gorffennaf 2014.

Y Bil

3. Cyflwynwyd y Bil yn Nhŷ'r Cyffredin ar 20 Mawrth 2014, a chwblhaodd ei gyfnod pwyllgor ar 6 Mai. Gellir gweld y Bil, fel y'i diwygiwyd, yma:

http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0205/14205
Mae'r Memorandwm yn ystyried y Bil fel y'i diwygiwyd.

Crynodeb o'r Bil a'i Amcanion Polisi

4. Noddir y Bil gan Swyddfa Cymru. Prif amcanion polisi'r Bil yw gwneud y Cynulliad Cenedlaethol ("y Cynulliad") a Llywodraeth Cymru yn fwy atebol i bobl Cymru am godi'r arian y maent yn ei wario, a gwella'r system etholiadau ar gyfer y Cynulliad.

5. Mae pedair rhan a dwy Atodlen i'r Bil:
Mae Rhan 1, cymalau 1 i 5, yn gwneud newidiadau sy'n ymwneud ag amlder etholiadau i Gynulliad Cenedlaethol Cymru. Cynhelir yr etholiadau cyffredinol i'r Cynulliad bob pum mlynedd (gan osgoi gwrthdaro ag etholiadau 2020 ac etholiadau dilynol San Steffan). Caiff y gwaharddiad ar ymgeisyddiaeth ddeuol ei ddileu, yn ogystal â'r gwelliannau a wnaed i'r darpariaethau sy'n ymwneud â'r arfer o fod yn Aelod Cynulliad ac yn Aelod Seneddol ar yr un pryd. Caiff Llywodraeth Cynulliad Cymru ei hailenwi'n Llywodraeth Cymru, a diwygir Deddf Llywodraeth Cymru i egluro bod Prif Weinidog Cymru yn cadw ei swydd yn ystod cyfnod diddymu.
Mae Rhan 2, cymalau 6 i 22, yn sefydlu trefniadau newydd ar gyfer trethu a benthyca. Mae'n datganoli'r cyfrifoldeb am dreth ar drafodion tir a gwaredu i safleoedd tirlenwi, yn diwygio pwerau benthyca Gweinidogion Cymru, ac yn creu'r posibilrwydd, yn amodol ar gymeradwyaeth mewn refferendwm, o ostyngiad o 10 ceiniog yn y dreth incwm ym mhob band treth, ynghyd â'r pŵer i'r Cynulliad, drwy benderfyniad, gyflwyno cyfradd o dreth incwm yn lle hynny yng Nghymru. Mae hefyd yn creu'r posibilrwydd o drethi datganoledig newydd, ac yn sicrhau cymhwysedd i ddeddfu ar weithdrefnau cyllidebol.
Mae Rhan 3, cymalau 23 a 24, yn cwmpasu dau fater amrywiol:
terfynau ar ddyledion cyfrifon refeniw tai, a'r gydberthynas rhwng Comisiwn y Gyfraith a sefydliadau datganoledig Cymru.
Mae Rhan 4, cymalau 25 i 29, yn nodi pryd y daeth y Bil i rym, beth mae'n ei gwmpasu, a materion eraill.
Mae Atodlen 1 yn rhoi manylion am y refferendwm dreth, tra bod Atodlen 2 yn cwmpasu'r gwelliannau a ddaeth yn sgîl datganoli'r dreth ar drafodion tir.

Y darpariaethau yn y Bil y gwneir cais am gydsyniad ar eu cyfer

6. Mae'r darpariaethau yn y Bil sy'n addasu cymhwysedd deddfwriaethol y Cynulliad ac y gwneir cais am gydsyniad ar eu cyfer yng nghymalau 6, 7, 14, 17 a 21. Nid oes unrhyw ddarpariaethau sy'n dod o fewn cymhwysedd presennol y Cynulliad. Nodir sylwebaeth Llywodraeth Cymru ar yr adrannau hyn yn y Memorandwm. Gellir crynhoi sut y maent yn ychwanegu at gymhwysedd y Cynulliad fel a ganlyn -

- Mae cymal 6 yn darparu'r strwythur lle gall Llywodraeth Cymru ddeddfu ar faterion sy'n ymwneud â'r dreth.
- Mae cymal 7 yn cyflwyno gwelliannau i Rannau 2 a 3 o Atodlen 7 i Ddeddf Llywodraeth Cymru sy'n galluogi'r Cynulliad, gyda chydsyniad y Trysorlys, i ddileu neu newid swyddogaethau Cyllid a Thollau EM pan fo'r swyddogaethau hynny'n ymwneud â threthi datganoledig.
- Byddai cymal 14 (ynghyd â chymal 15) yn caniatáu i Lywodraeth Cymru a'r Cynulliad gyflwyno treth yng Nghymru ar drafodion sy'n ymwneud â buddiannau mewn tir. Byddai hyn yn gysylltiedig â datgymhwyso treth dir y dreth stamp yng Nghymru. Bydd yr Aelodau'n awyddus i nodi bod cyflwyno treth yng Nghymru yn dibynnu ar ddatgymhwyso treth dir y dreth stamp a fydd o'r dyddiad "dod i rym" h.y. dyddiad a ddarperir ar ei gyfer mewn gorchymyn a wneir gan y Trysorlys.
- Mae cymal 17 yn cynnwys darpariaethau yn Neddf Llywodraeth Cymru sy'n nodi cwmpas y pŵer newydd i gyflwyno treth ar achosion o waredu i safleoedd tirlenwi yng Nghymru. Yn yr un modd â threth dir y dreth stamp, caiff treth tirlenwi bresennol y DU ei datgymhwyso yn unol â gorchymyn a wneir gan y Trysorlys, nid gan Weinidogion Cymru.
- Mae cymal 21 yn diwygio Atodlen 7 i Ddeddf Llywodraeth Cymru drwy ymgynghori ar gymhwysedd y Cynulliad i ddeddfu ar gyfer ei weithdrefnau cyllidebol ei hun. Mae hyn yn cynnwys y gallu i ddiwygio rhai 'darpariaethau gwarchodedig' ar hyn o bryd o Ddeddf Llywodraeth Cymru, h.y. adrannau 120(2), a 125 i 128. Bydd hefyd yn caniatáu gwelliant i adran 119 mewn perthynas â'r taliadau amcangyfrifedig ar gyfer blwyddyn ariannol i Gronfa Gyfunol Cymru neu i Weinidogion Cymru, Prif Weinidog Cymru neu'r Cwnsler Cyffredinol. Caniateir diwygio adran 159 neu Ran 5 o Atodlen 7 pan fo hynny'n digwydd mewn cysylltiad â, neu o ganlyniad i, ddarpariaeth Deddf

Cynulliad sy'n ymwneud â gweithdrefnau cyllidebol neu drethi datganoledig, a bod yr Ysgrifennydd Gwladol yn cydsynio i'r ddarpariaeth.
Byddai cymal 21 yn galluogi'r Cynulliad i ddeddfu mewn perthynas â gweithdrefnau ar gyfer craffu a phennu cyllideb flynyddol Gweinidogion Cymru a "phersonau perthnasol" eraill. Byddai'n caniatáu ar gyfer proses sy'n fwy cyfannol a fyddai'n awdurdodi gwariant, cyfraddau trethiant (e.e. mewn perthynas â threthi datganoledig newydd) a benthyca.

Addasu swyddogaethau Gweinidogion Cymru

7. Mae'r Datganiad Ysgrifenedig a osodwyd gan y Gweinidog Cyllid yn nodi sut y mae'r Bil yn addasu swyddogaethau Gweinidogion Cymru. Gellir eu crynhoi fel a ganlyn:-

- Mae cymal 8 yn rhoi pŵer i bennu, drwy benderfyniad, cyfradd y dreth incwm yng Nghymru, ar gyfer trethdalwyr Cymru. Mewn gwirionedd, nid addasiad mo hwn o swyddogaeth Gweinidogion, gan mai hawl y Cynulliad, drwy benderfyniad, yw pennu cyfradd y dreth incwm yng Nghymru. Fodd bynnag, mae'r Bil yn ei gwneud yn ofynnol bod Rheolau Sefydlog y Cynulliad yn darparu mai dim ond Prif Weinidog Cymru neu un o Weinidogion Cymru all wneud cynnig i benderfynu ynghylch y gyfradd yng Nghymru. Efallai yr hoffai'r Aelodau nodi, er bod y Bil drafft yn sicrhau'r 'cam clo', mae'r cyfraddau sylfaenol, uwch ac ychwanegol ar gyfer y dreth incwm yng Nghymru yn egluro y gall y Cynulliad amrywio pob cyfradd treth incwm, ond mae'n rhaid i amrywiad o'r fath fod yr un pwynt canran. Dim ond at gyfradd y dreth incwm yng Nghymru yr oedd yr ymgynghoriad drafft yn cyfeirio ati, a gallai fod wedi'i dehongli fel un gyfradd sefydlog o dreth incwm ar gyfer yr holl drethdalwyr yng Nghymru.
- Mae cymal 12 yn darparu dull lle gall y Cynulliad alw am refferendwm ar gael cyfradd treth incwm ar wahân yng Nghymru. Mae'r weithdrefn hon yn debyg i honno a oedd yn gymwys pan ddaethpwyd â Rhan 4 o Ddeddf Llywodraeth Cymru i rym.
- Mae cymal 16 yn ei gwneud yn ofynnol rhoi gwybodaeth i Cyllid a Thollau EM am drafodion tir yng Nghymru gan na fydd y wybodaeth hon ar gael i Cyllid a Thollau EM mwyach o ffurflenni trafodion tir.
- Mae cymal 19 yn addasu Deddf Llywodraeth Cymru i ddiwygio'r amgylchiadau lle gall Gweinidogion Cymru fenthyca, ac mae'n nodi'r rheolaethau a'r cyfyngiadau ar fenthyciadau o'r fath a gaiff eu caniatáu i reoli

anwadalrwydd derbyniadau o fewn blwyddyn, darparu balans gweithio, ymdrin â'r gwahaniaethau rhwng rhagolygon ar gyfer y flwyddyn gyfan a derbyniadau alldro ar gyfer trethi datganoledig ac i ariannu gwariant cyfalaf.

- Mae cymal 20 yn diddymu'r ddarpariaeth fenthyca bresennol a nodir yn Neddf Awdurdod Datblygu Cymru 1975.
- Mae cymal 22 yn nodi'r gofynion ar gyfer yr Ysgrifennydd Gwladol a Gweinidogion Cymru i gyflwyno adroddiad ar roi'r ddarpariaeth ariannol newydd a nodir yn Rhan 2 o'r Bil ar waith, a'i gweithredu.
- Mae cymal 23 yn caniatáu i'r Trysorlys bennu uchafswm ar y lefel uchaf o ddyled tai y gellir ei dal yn ei chrynswth, gan awdurdodau tai lleol yng Nghymru ac yn ei gwneud yn ofynnol i Weinidogion Cymru benderfynu faint o ddyled tai y gall pob awdurdod tai ei dal o fewn yr uchafswm hwnnw. Mae hyn yn sefydlu system debyg i honno sy'n gweithredu yn Lloegr.
- Mae cymal 24 yn rhoi dyletswydd ar Gomisiwn y Gyfraith i roi cyngor a gwybodaeth i Weinidogion Cymru yn uniongyrchol ac yn galluogi Gweinidogion Cymru i gyfeirio materion o ran diwygio'r gyfraith at y Comisiwn.
- Mae Atodlen 1 yn nodi'r fframwaith ar gyfer cynnal refferendwm wrth ddod â'r darpariaethau ar gyfer y dreth incwm i rym.

Y rhesymau dros ddefnyddio'r Bil

8. Nid yw'r darpariaethau y cyfeirir atynt yn y Memorandwm o fewn cymhwysedd deddfwriaethol y Cynulliad ar hyn o bryd, ond maent yn addasu'r cymhwysedd hwnnw drwy ei ymestyn ar gyfer y dyfodol. Mae'r darpariaethau'n gweithredu nifer o'r argymhellion a wnaed gan Gomisiwn Silk yn ei adroddiad cyntaf, a dderbyniwyd yn eu cyfanrwydd gan Lywodraeth Cymru. Mae'r darpariaethau y cyfeirir atynt yn y Datganiad Ysgrifenedig yn atodol i'r cymhwysedd deddfwriaethol ehangach mewn perthynas â'r trethi a'r trefniadau benthyca datganoledig a gyflwynir i'r Cynulliad a Gweinidogion Cymru yn y drefn honno, neu sy'n ofynnol er mwyn i'r darpariaethau eraill weithio'n effeithiol.

Materion sy'n arbennig o berthnasol i'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

9. Mae cymal 3 o'r Bil yn nodi y gellir datgymhwyso Aelodau Seneddol rhag bod yn Aelodau'r Cynulliad hefyd. Tra bod y cymal o ddiddordeb cyffredinol yng nghyd-destun y Pwyllgor i ddarpariaethau datgymhwyso, mae hefyd yn cynnwys cynseiliau defnyddiol i ddatgymhwyso ar ôl etholiad yn unig. Dim ond wyth diwrnod ar ôl etholiad y Cynulliad y mae'r datgymhwysiad yn effeithiol, sy'n rhoi cyfle i Aelod Seneddol presennol 'ymddiswyddo' o'r Senedd. Mae'n rhaid i Aelodau sydd am roi'r gorau i'w sedd gael eu penodi i un o ddwy swydd â thâl y Goron, a gedwir at y diben hwn yn unig, sef Stiward a Beili'r Goron ar gyfer Chiltern Hundreds a Stiward a Beili'r Goron ar gyfer Maenor Northstead. Efallai y bydd y Pwyllgor am drafod a yw hwn yn ddull yr hoffai ei argymell mewn achosion eraill.

10. Mae cymal 24 o'r Bil yn cyflwyno darpariaethau ar gyfer Comisiwn y Gyfraith i roi cyngor a chymorth i Weinidogion Cymru. Fodd bynnag, nid yw'n cyfeirio at "raglen gynhwysfawr o gydgrynhoi a diwygio'r gyfraith statud mewn meysydd datganoledig", fel y gwnaeth y Comisiwn gais amdano yn ei gyflwyniad i'r Ysgrifennydd Gwladol.

12. Mae cymal 6 y Bil yn cynnwys pŵer i ychwanegu trethi datganoledig newydd drwy Orchymyn yn y Gyfrin Gyngor, y mae'n rhaid i benderfyniad y Cynulliad ei gymeradwyo. Fodd bynnag, mae cychwyn y darpariaethau sy'n ymwneud â threthi datganoledig yn dibynnu ar orchmynion a wneir gan y Trysorlys lle nad oes gan y Cynulliad na Gweinidogion Cymru ran i'w chwarae ynddynt. Yn yr un modd, os bydd pleidlais gadarnhaol yn y refferendwm, caiff y darpariaethau ar gyfer y dreth incwm eu cychwyn gan y Trysorlys, nid Gweinidogion Cymru; mae hyn yn wahanol i'r refferendwm diwethaf.

13. Mae'r Memorandwm hwn a'r datganiad ategol wedi tynnu sylw at fwlch yn Rheolau Sefydlog presennol y Cynulliad. Mae angen Memorandwm ar Reol Sefydlog 29 mewn perthynas â materion o fewn cymhwysedd deddfwriaethol y Cynulliad, neu sy'n addasu'r cymhwysedd hwnnw. Mae angen datganiad ar Reol Sefydlog 30 pan fo Bil San Steffan yn cynnig diwygio swyddogaethau Gweinidogion Cymru a'r Cwnsler Cyffredinol. Nid yw'r naill Reol Sefydlog na'r llall yn cwmpasu addasiadau i swyddogaethau'r Cynulliad, ar wahân i'w gymhwysedd deddfwriaethol. O ganlyniad i hyn, nid yw'r pŵer a geir yng nghymal 8 i alluogi'r Cynulliad, drwy benderfyniad, i bennu'r gyfradd yng Nghymru at y diben o gyfrifo cyfraddau'r dreth incwm, wedi'i

gynnwys yn y naill Reol Sefydlog na'r llall, er ei fod yn ychwanegiad arwyddocaol iawn i bwerau'r Cynulliad.

Casgliad

13. Ni allai'r darpariaethau y cyfeiriwyd atynt yn y Memorandwm a'r Datganiad Ysgrifenedig gael eu gwneud gan Ddeddf Cynulliad, ac felly mae'n briodol bod y Bil a'r Memorandwm yn mynd i'r afael â'r materion hyn.

Y Gwasanaethau Cyfreithiol 12 Mai 2014

Eitem 6

Cyfeirnod y Pwyllgor: CLA(4)-14-14

Cynulliad Cenedlaethol Cymru | National Assembly for Wales

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Adroddiad monitro sybsidiaredd gwanwyn 2014 (Medi 2013–Ebrill 2014

Dyddiad y papur:	**Mai 2014**

Cynhyrchwyd y papur briffio hwn gan y Gwasanaeth Ymchwil at ddefnydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol.

I gael rhagor o wybodaeth, cysylltwch â Stephen Boyce yn y Gwasanaeth Ymchwil
Estyniad ffôn 8095
E-bost: Stephen.boyce@cymru.gov.uk

Research Service

Cynnwys

1. Rhagymadrodd

O dan Reol Sefydlog 21, mae gan 'bwyllgor cyfrifol' yn y Cynulliad (sef y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol ar hyn o bryd) bŵer i ystyried deddfwriaeth ddrafft yr UE sy'n ymwneud â materion sydd o fewn cymhwysedd deddfwriaethol y Cynulliad neu â swyddogaethau Gweinidogion Cymru a'r Cwnsler Cyffredinol, er mwyn gweld a yw'n cydymffurfio ag egwyddor sybsidiaredd.

Ymgorfforwyd egwyddor sybsidiaredd yn Erthygl 5 o Gytuniad yr Undeb Ewropeaidd:

> 1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.
>
> 2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.
>
> 3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.
>
> The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.
>
> 4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.
>
> The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.[1]

Yn ychwanegol, mae'r modd y cymhwysir yr egwyddor yn cael ei lywodraethu gan y Protocol ar Gymhwyso Egwyddorion Sybsidiaredd a Chymesuredd. Mae'r rhan sy'n berthnasol o ran gwaith y Cynulliad wedi'i chynnwys ym mharagraff cyntaf Erthygl 6:

> Any national Parliament or any chamber of a national Parliament may, within eight weeks

[1] Cyfnodolyn Swyddogol yr Undeb Ewropeaidd, *Consolidated version of the Treaty on European Union*, C83/204, 30 Mawrth 2010

> from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. **It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers.** *[pwyslais y Gwasanaeth Ymchwil]*[2]

2. Y broses monitro

I sicrhau bod y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol yn cyflawni ei swyddogaeth ynglŷn â monitro sybsidiaredd yn effeithiol fel y'i nodir yn y Rheolau Sefydlog, mae swyddogion y Cynulliad yn monitro holl gynigion drafft yr UE ar gyfer deddfwriaeth sy'n gymwys i Gymru. Gwneir hyn mewn modd systemataidd er mwyn gweld a ydyn nhw'n codi pryderon o ran sybsidiaredd. Mae'r modd y mae swyddogion y Cynulliad yn monitro'r cynigion hyn wedi'i amlinellu isod er gwybodaeth:

- Yn y lle cyntaf, mae'r Cynulliad yn cael gwybod am bob cynnig a gyhoeddir gan y Comisiwn Ewropeaidd i'w ystyried drwy gyfrwng rhestr (sy'n cael ei hadnabod fel y "rhestr sypiau"). Anfonir hon gan y Swyddfa Dramor a Chymanwlad ar ran Llywodraeth y Deyrnas Unedig at Wasanaeth Ymchwil y Cynulliad er gwybodaeth.
- Wedyn bydd yr adran berthnasol o Lywodraeth y Deyrnas Unedig yn paratoi Memorandwm Esboniadol (EM) ar sail y cynigion yn y rhestr sypiau a hynny fel arfer o fewn pedair i chwe wythnos ar ôl hysbysiad cychwynnol y Swyddfa Dramor a Chymanwlad. Mae pob EM yn cynnwys asesiad o effaith y cynigion ar bolisïau (gan gynnwys a yw'r adran o Lywodraeth y Deyrnas Unedig yn credu bod y cynnig yn codi unrhyw bryderon ynglŷn â sybsidiaredd). Mae copïau o bob EM yn cael eu hanfon at y Cynulliad drwy'r Gwasanaeth Ymchwil.
- Mae'r Gwasanaeth Ymchwil yn hidlo'r EMs sy'n dod i law i weld a yw'r cynigion dan sylw yn gynigion ynglŷn â deddfwriaeth neu beidio[3] ac a ydyn nhw'n cynnwys materion a allai fod o ddiddordeb i'r Cynulliad (hynny yw, yn ymwneud â materion datganoledig).
- Wedyn mae'r EMs hynny sy'n ymwneud â chynigion ynglŷn â deddfwriaeth ac sy'n ymdrin â materion sydd o ddiddordeb i'r Cynulliad yn cael eu gwirio ymhellach gan

[2] Cyfnodolyn Swyddogol yr Undeb Ewropeaidd, *Protocol on the Application of the Principles of Subsidiarity and Proportionality*, C310/207, 16 Rhagfyr 2004

[3] Dim ond o ran cynigion drafft sy'n ymwneud â deddfwriaeth y caniateir codi pryderon o ran sybsidiaredd.

swyddogion o Wasanaethau Cyfreithiol y Cynulliad, Swyddfa Brwsel a'r Gwasanaeth Ymchwil i weld a ydyn nhw'n codi unrhyw bryderon posibl o ran sybsidiaredd.

- Os bydd cynnig yn codi pryderon o safbwynt sybsidiaredd, bydd swyddogion y Cynulliad yn tynnu sylw'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol ato ar unwaith. Gofynnir i'r Aelodau ystyried a ddylai'r Pwyllgor ofyn i'r naill Dŷ neu'r llall neu i'r ddau Dŷ yn San Steffan roi 'barn resymedig' ar y cynnig neu beidio.
- Wedyn mae'r cynigion hynny sy'n ymwneud â deddfwriaeth ac sy'n ymwneud â materion datganoledig ond nad ydyn nhw'n codi pryderon o ran sybsidiaredd yn cael eu coladu mewn adroddiad monitro sy'n cael ei gynhyrchu gan y Gwasanaeth Ymchwil, sef adroddiad sy'n cael ei ystyried fel papur i'w nodi gan y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol yn ystod pob tymor ym mlwyddyn y Cynulliad (Hydref [Medi-Rhagfyr], Gwanwyn [Ionawr-Ebrill] a Haf [Mai-Awst]).

Mae'r adroddiad hwn felly yn cynnwys trosolwg cyffredinol o'r cynigion deddfwriaethol drafft gan yr UE a daeth i law Gwasanaeth Ymchwil y Cynulliad rhwng Medi 2013 ac Ebrill 2014. Mae'n darparu rhagor o wybodaeth am y cynigion hyn a nodwyd gan swyddogion y Cynulliad am eu bod yn ymwneud â deddfwriaeth ac â materion datganoledig.

Ond, sylwch mai cynigion ynglŷn â deddfwriaeth sy'n cael eu monitro'n bennaf yn yr adroddiad hwn. Ar y cyfan nid yw'n cynnwys manylion cynigion sydd heb fod yn ddeddfwriaethol ond a allai fod yn berthnasol i waith y Cynulliad. Mae'r rheiny'n cael eu monitro gan y Gwasanaeth Ymchwil ar wahân.

3. Trosolwg o gynigion drafft yr UE a ddaeth i law (Medi 2013-Ebrill 2014)

Cafodd Gwasanaeth Ymchwil y Cynulliad gyfanswm o 548 o EMs gan Lywodraeth y Deyrnas Unedig ynglŷn â chynigion gan yr UE oddi wrth Lywodraeth y Deyrnas Unedig rhwng 1 Medi 2013 a 30 Ebrill 2014.

O'r rhain, nododd swyddogion y Cynulliad fod 15 EM yn ymwneud â deddfwriaeth ac o ddiddordeb i'r Cynulliad.

Wedi cael eu dadansoddi ymhellach gan swyddogion yng Ngwasanaeth Cyfreithiol y Cynulliad, Swyddfa Brwsel a'r Gwasanaeth Ymchwil, ni chafodd yr un o'r xx o gynigion ei nodi fel un a oedd yn codi pryderon o safbwynt sybsidiaredd. Ceir manylion y cynigion hyn isod.

3.1. Cynigion deddfwriaethol yr UE nad oedden nhw'n codi pryderon o ran sybsidiaredd

Dyddiad yr e-bost	Teitl a disgrifiad
06/09/2013	*Cynnig ar gyfer Rheoliad gan Senedd Ewrop a'r Cyngor yn diwygio Rheoliad y Cyngor (EC) Rhif 1698/2005 ynghylch* ***cymorth i ddatblygu gwledig oddi wrth Gronfa Amaethyddiaeth Ewrop ar gyfer Datblygu Gwledig*** (COM(2013)521) Byddai'r rheoliad arfaethedig yn caniatáu i'r Aelod-wladwriaethau sy'n profi anawsterau ariannol difrifol dderbyn cynnydd mewn cymorth ariannol o'r gronfa o 10 pwynt canran uwchlaw'r trothwy arferol a ganiateir tan 31 Rhagfyr 2015.
24/09/2013	Cynnig ar gyfer Rheoliad gan Senedd Ewrop a'r Cyngor ynghylch ***atal a rheoli cyflwyniad a lledaeniad rhywogaethau estron ymledol.*** (COM(2013)620) Mae'r cynnig yn ei gwneud yn ofynnol i'r Aelod-wladwriaethau atal rhywogaethau estron ymledol rhag cael eu cyflwyno a'u lledaenu, sef rhywogaethau y cytunir ar restr ohonyn nhw o fewn 12 mis ar ôl i'r rheoliad ddod i rym.
03/10/2013	Cynnig ar gyfer Rheoliad gan Senedd Ewrop a'r Cyngor yn diwygio Rheoliad y Cyngor (EC) Rhif 718/1999 ynghylch ***polisi'r Gymuned ar allu'r fflyd i hybu trafnidiaeth ar ddyfrffyrdd mewndirol.*** (COM(2013)621) Sefydlodd Rheoliad (EC) Rhif 718/1999 Gronfa Dyfrffyrdd Mewndirol a oedd i'w defnyddio mewn achosion lle ceid 'aflonyddu difrifol ar y farchnad' yn y farchnad dyfrffyrdd mewndirol ac i wella amgylchedd gwaith y diwydiant. Nid yw'r gronfa wedi'i defnyddio eto a nod y diwygiad hwn ar Reoliad 718/1999 yw ehangu cwmpas y gronfa. Mae'n gam cyntaf tuag at roi

	cynllun gweithredu Ewropeaidd diwygiedig ("NIAIDES II") ar waith er mwyn symud rhagor o nwyddau i ddyfrffyrdd yr UE a lleihau allyriadau carbon. **Heb ei ddatganoli.**
14/10/2013	Cynnig ar gyfer **Rheoliad** gan Senedd Ewrop a'r Cyngor ynghylch sylweddau seicoweithredol newydd. (HO – disgwylir yr EM erbyn 8 Hydref) Nod y Rheoliad drafft fyddai cryfhau gallu'r UE i ymateb i sylweddau seicoweithredol newydd a chaniatáu i sylweddau niweidiol gael eu tynnu oddi ar y farchnad yn gyflym. Byddai'n disodli offeryn sydd eisoes yn bod, Penderfyniad y Cyngor 2005/387/JHA. **Heb ei ddatganoli.**
28/10/2013	Cynnig ar gyfer **Argymhelliad** gan y Cyngor ynghylch hybu iechyd – gwella gweithgarwch corfforol ar drws sectorau. (DOH/DCMS – disgwylir yr EM erbyn 24 Medi) Nod yr argymhelliad hwn yw mynd i'r afael â diffygion wrth ddatblygu a gweithredu polisïau gweithgarwch corfforol sy'n gwella iechyd (HEPA) gan yr Aelod-wladwriaethau. Mae'r rhain yn cynnwys yr angen i ddatblygu ymagweddau traws-sectoraidd a mabwysiadu amcanion a nodau clir ar gyfer HEPA, a monitro a gwerthuso polisïau a chyfraddau HEPA. **Heb fod yn ddeddfwriaethol.**
13/11/2013	Cynnig ar gyfer Rheoliad gan Senedd Ewrop a'r Cyngor yn sefydlu ***Cyfleuster Cysylltu Ewrop.*** (COM(2013)665) Yn 2011 cynigiodd y Comisiwn Ewropeaidd greu offeryn integredig newydd ar gyfer buddsoddi ym mlaenoriaethau seilwaith yr UE mewn trafnidiaeth, ynni a thelathrebu: "Cyfleuster Cysylltu Ewrop".
22/11/2013	Cynnig ar gyfer Rheoliad gan Senedd Ewrop a'r Cyngor yn diwygio Rheoliad (EC) Rhif 1166/2008 ynghylch ***arolygon strwythur ffermydd a'r arolwg o ddulliau cynhyrchu amaethyddol, o ran fframwaith ariannol y cyfnod 2014-2018.*** (COM(2013)757) Mae arolwg cymunedol ar strwythur daliadau amaethyddol yn ofynnol o dan

	Reoliad (EC) 1166/2008 yn 2016. Mae'r arolygon hyn yn cynnwys cyfraniad ariannol gan y Comisiwn Ewropeaidd at y treuliau a ysgwyddir gan yr Aelod-wladwriaethau. Mae'r gwelliant arfaethedig yn cadw lefel y cyfraniad yr un peth ar gyfer yr Aelod-wladwriaethau presennol ac yn cyflwyno cyfraniad newydd ar gyfer Croatia
22/11/2013	Cynnig ar gyfer Cyfarwyddeb newydd gan Senedd Ewrop a'r Cyngor yn diwygio *Cyfarwyddeb 94/62/EC ynghylch pecynnau a gwastraff pecynnau er mwyn lleihau nifer y bagiau siopa plastig ysgafn a ddefnyddir.* (COM(2013)761) Mae'r cynnig yn ei gwneud yn ofynnol i'r Aelod-wladwriaethau gymryd mesurau i leihau defnyddio bagiau siopa plastig ysgafn, o drwch diffiniedig, o fewn dwy flynedd ar ôl i'r Mesur ddod i rym. Mae Cymru wedi cyflwyno tâl am yr holl fagiau untro yn y pwynt gwerthu ac mae'r mesur hwn yn ymestyn y tu hwnt i'r bagiau siopa plastig ysgafn a gynhwysir yng nghynnig y Comisiwn. Bydd yn ddiddorol gweld sut mae'r ddeddfwriaeth derfynol yn effeithio ar ddeddfwriaeth bresennol Cymru (os bydd yn effeithio arni o gwbl) ac felly mae hyn yn codi cwestiwn ynglŷn â 'chymesuredd' y mesurau arfaethedig yn hytrach na chwestiwn 'sybsidiaredd'.
11/12/2013	Cynnig ar gyfer Rheoliad gan Senedd Ewrop a'r Cyngor ynghylch *darparu gwybodaeth a mesurau hybu ar gyfer cynhyrchion amaethyddol ar y farchnad fewnol ac mewn trydydd gwledydd.* (COM(2013)812) Nod y cynnig yw diwygio'r ffyrdd y mae cyllid yr UE yn hybu cynhyrchion amaethyddol yn yr UE ac mewn trydydd gwledydd. Câi ystod o fesurau eu cyflwyno a fyddai'n sicrhau bod mesurau hybu'n cael eu targedu'n well mewn marchnadoedd mewnol ac allanol drwy ddatblygu a gweithredu strategaeth, ymestyn y rhestr o fuddiolwyr a buddiolwyr posibl, hybu rhaglenni sy'n cynnwys mwy nag un Aelod-wladwriaeth, a defnydd cyfyngedig ar darddiadau a brandiau. Byddai cyllideb y gronfa'n cael ei

	chynyddu o €60m (£51m[4]) yn 2013 i €200m (£170m) erbyn 2020.
09/01/2014	Cynnig ar gyfer Argymhelliad gan y Cyngor ynghylch ***Fframwaith Ansawdd i Hyfforddeiaethau.*** (COM(2013)857) Mae'r Argymhelliad yn gofyn i'r Aelod-wladwriaethau sicrhau bod hyfforddeiaethau marchnad-agored (h.y. y rhai sy'n cynnwys yr hyfforddai a'r cyflogwr yn unig ac nid unrhyw sefydliad arall) yn cydymffurfio â set o ofynion ansawdd. Byddai'r cynnig yn cynnwys yn bennaf yr hyn y byddai'r Deyrnas Unedig yn ei alw yn 'interniaethau i raddedigion', ond fel y mae wedi'i ddrafftio ar hyn o bryd gallai gynnwys unrhyw fath o leoliad profiad gwaith nad yw'n rhan o addysg ffurfiol neu gwrs galwedigaethol. **Heb fod yn ddeddfwriaethol**
14/01/2014	Cynnig ar gyfer Cyfarwyddeb gan y Cyngor ynghylch ***gosod bwyd o glonau anifeiliaid ar y farchnad.*** (COM(2013)893) Nod y cynnig yw gwahardd marchnata clonau anifeiliaid ac embryonau ac unrhyw fwyd a gynhyrchir ohonynt.
14/01/2014	Cynnig ar gyfer Cyfarwyddeb gan Senedd Ewrop a'r Cyngor ynghylch ***clonio anifeiliaid o rywogaethau'r fuwch, y mochyn, y ddafad, yr afr a'r ceffyl a gedwir ac a atgenhedlir at ddibenion ffermio.*** (COM(2013)892) Nod y cynnig yw gwahardd clonio masnachol ar rywogaethau anifeiliaid fferm traddodiadol. Serch hynny, bydd y cynnig yn caniatáu parhau i ddefnyddio deunydd atgenhedlu o glonau at ddibenion bridio da byw; ymchwil wyddonol ar glonio a defnyddio clonio er mwyn cadw bridiau prin neu rywogaethau sydd mewn perygl; ac ar gyfer digwyddiadau chwaraeon neu ddigwyddiadau diwylliannol.
15/01/2014	*Cynnig ar gyfer Rheoliad gan Senedd Ewrop a'r Cyngor ynghylch* ***bwydydd***

[4] Mae pob ffigur ariannol wedi'i darparu drwy ddefnyddio cyfradd gyfnewid Swyddfa'r Cabinet ar gyfer Tachwedd 2013

	newydd. (COM(2013)894) Nod y rheoliad arfaethedig yw diweddaru'r rheoliad presennol ynghylch bwydydd newydd ac mae'n cynnwys eglurhad o'r diffiniad o fwyd newydd a gweithdrefn awdurdodi symlach ar gyfer bwydydd newydd.
21/01/2014	Cynnig ar gyfer Cyfarwyddeb gan Senedd Ewrop a'r Cyngor ynghylch ***cyfyngu allyriadau llygrynnau penodol i'r aer o safleoedd hylosgi canolig.*** (COM(2013)919) Byddai Cyfarwyddeb newydd yn rheoleiddio allyriadau o safleoedd hylosgi sydd â mewnbwn thermol o rhwng 1 a 50MW. Byddai hyn yn cynnwys safleoedd ynni ar gyfer adeiladau mawr a gosodiadau diwydiannol bach. Mae'r Gyfarwyddeb arfaethedig yn rhan o Becyn Polisi Aer Glân a fabwysiadwyd gan y Comisiwn ar 18 Rhagfyr 2013.
21/01/2014	*Cynnig ar gyfer Cyfarwyddeb gan Senedd Ewrop a'r Cyngor ynghylch* ***lleihau allyriadau cenedlaethol llygrynnau atmosfferig penodol ac yn diwygio Cyfarwyddeb 2003/35/EC.*** (COM(2013)920) Mae'r Gyfarwyddeb arfaethedig yn rhan o Becyn Polisi Aer Glân a fabwysiadwyd gan y Comisiwn ar 18 Rhagfyr 2013. Datblygwyd y pecyn yn sgil adolygiad o'r polisi ansawdd aer gan y Comisiwn a ddechreuodd yn 2011. Nod y pecyn yw diweddaru'r ddeddfwriaeth bresennol a lleihau eto ar allyriadau niweidiol o ddiwydiant, traffig, safleoedd ynni ac amaethyddiaeth, er mwyn lleihau eu heffaith sylweddol ar iechyd a'r amgylchedd
06/02/2014	*Cynnig ar gyfer Rheoliad gan y Cyngor yn nodi'r* ***lefelau uchaf a ganiateir o halogiad ymbelydrol mewn bwyd a phorthiant yn sgil damwain niwclear neu unrhyw achos arall lle ceir argyfwng radiolegol.*** (COM(2013)943) Mae'r cynnig yn cyfuno tri rheoliad presennol: Rheoliad y Cyngor (Euratom) Rhif 3954/87, Rheoliad y Comisiwn (Euratom) Rhif 944/89 a Rheoliad y Comisiwn (Euratom) Rhif 770/90. Mae hefyd yn diweddaru'r weithdrefn ar gyfer rhoi lefelau halogiad ymbelydrol ar waith yn sgil argyfwng niwclear neu

	radiolegol.
10/03/2014	*Cynnig ar gyfer Argymhelliad gan y Cyngor ynghylch* ***Egwyddorion Ansawdd Twristiaeth i Ewrop.*** (COM)(2014)85) Nod yr argymhelliad hwn yw sefydlu egwyddorion ansawdd i sefydliadau sy'n darparu gwasanaethau twristiaeth gan ddangos ansawdd cyrchfannau twristaidd yn yr EU i ddefnyddwyr. **Heb fod yn ddeddfwriaethol**
08/04/2014	*Cynnig ar gyfer Rheoliad gan Senedd Ewrop a'r Cyngor ynghylch* ***cynhyrchu organig a labelu cynhyrchion organig****, yn diwygio Rheoliad (EU) Rhif XXX/XXX Senedd Ewrop a'r Cyngor a [Rheoliad Rheolaethau Swyddogol] y Cyngor ac yn diddymu Rheoliad y Cyngor (EC) Rhif 834/2007.* (COM(2014)180 Mae'r cynnig yn cynnwys rheoliad ac Asesiad Effaith newydd sy'n cwmpasu cynhyrchu organig a labelu cynhyrchion organig. Ceir Cynllun Gweithredu perthynol hefyd sy'n ystyried dyfodol cynhyrchu organig. Mae'r dogfennau wedi'u cynhyrchu yn sgil adolygiad gan y Comisiwn o'r fframwaith o ddeddfau a pholisïau ar gyfer cynhyrchu organig ledled yr UE. Does dim materion sybsidiaredd yn codi, ond fe fydd diddordeb yng Nghymru yng nghynnwys y cynigion a 'chymesuredd' y mesurau arfaethedig.

Review of the
Balance of Competences

CALL FOR EVIDENCE ON THE GOVERNMENT'S REVIEW OF THE BALANCE OF COMPETENCES BETWEEN THE UNITED KINGDOM AND THE EUROPEAN UNION

Semester 4

SUBSIDIARITY AND PROPORTIONALITY

Foreign and Commonwealth Office

Opening date: 27 March 2014

Closing date: 30 June 2014

Contents

1. Introduction

1.1 The Foreign Secretary launched the Balance of Competences Review in Parliament in July 2012, taking forward the Coalition commitment to examine the balance of competences between the UK and the European Union. The review will provide an analysis of what the UK's membership of the EU means for the UK national interest. It aims to deepen public and Parliamentary understanding of the nature of our EU membership and provide a constructive and serious contribution to the national and wider European debate about modernising, reforming and improving the EU in the face of collective challenges. It will not be tasked with producing specific recommendations or looking at alternative models for Britain's overall relationship with the EU.

1.2 The review is broken down into a series of reports on specific areas of EU competence, spread over four semesters between autumn 2012 and autumn 2014. The review is led by Government but will also involve non-governmental experts, organisations and other individuals who wish to feed in their views. Foreign Governments, including our EU partners and the EU Institutions, are also being invited to contribute. The process will be comprehensive, evidence-based and analytical. The progress of the review will be transparent, including in respect of the contributions submitted to it.

1.3 This call for evidence sets out the scope of the review which will cover the EU principles of Subsidiarity and Proportionality, as well as Article 352 of the Treaty on the Functioning of the European Union (TFEU) (the so-called "flexibility clause"). The report will look at the principles of Subsidiarity and Proportionality, how they developed, and how they are used today, assessing what this means for the UK and its national interest, as well as where future challenges and developments may lie.

1.4 As Subsidiarity and Proportionality are fundamental principles rather than distinct areas of competence, the scope of the report is expected to be broad, and to assess the impact of the principles in different policy areas. It will therefore draw heavily on previous work in this area, including previous Balance of Competences reports. Full details of the programme as a whole can be found at: http://www.gov.uk/review-of-the-balance-of-competences.

2. EU competence and principles

2.1 For the purposes of this review, we are using a broad definition of competence. Put simply, competence in this context is about everything deriving from EU law that affects what happens in the UK. That means examining all the areas where the Treaties give the EU competence to act, including the provisions in the Treaties giving the EU institutions the power to legislate, to adopt non-legislative acts, or to take any other sort of action. But it also means examining areas where the Treaties apply directly to the Member States without needing any further action by the EU institutions.

2.2 The EU's competences are set out in the EU Treaties, which provide the basis for any actions the EU institutions take. The EU can only act within the limits of the competences conferred on it by the Treaties, and where the Treaties do not confer competences on the EU they remain with the Member States.

2.3 There are different types of competence: exclusive, shared and supporting. Only the EU can act in areas where it has exclusive competence, such as the customs union and common commercial policy. In areas of shared competence, such as the single market, environment and energy, either the EU or the Member States may act, but the Member States may be prevented from acting once the EU has done so. And in other areas covered by the EU Treaties, the primary responsibility for action rests with Member States, with the EU playing a supporting role; action by the EU does not prevent the Member States from acting. In other areas, the EU has no competence.

2.4 The table below sets out the current state of EU competence after the changes made by the Treaty of Lisbon.

Exclusive Competence	Shared Competence	Supporting Competence
Customs union Competition policy within the internal market Monetary policy for eurozone members Conservation of marine biological resources Common commercial policy	Internal market Social policy Economic, social and territorial cohesion Agriculture and fisheries Environment Consumer protection Transport Trans-European networks Energy Area of freedom, security and justice Common safety concerns in public health matters	Protection and improvement of human health Industry Culture Tourism Education, vocational training, youth and sport Civil Protection Administrative cooperation

2.5 Subsidiarity and Proportionality are not types of competence, but rather fundamental principles which must be followed by the EU when it is exercising competence. The EU must act in accordance with fundamental rights as set out in the Charter of Fundamental Rights (such as freedom of expression and non-discrimination) and with the principles of Subsidiarity and Proportionality. Under the principle of Subsidiarity, where the EU does not have exclusive competence, it can only act if it is better placed than the Member States to do so because of the scale or effects of the proposed action. Under the principle of Proportionality, the content and form of EU action must not exceed what is necessary to achieve the objectives of the EU treaties.

2.6 Considering how these principles, as existing Treaty mechanisms to regulate EU action, work in practice is an essential starting point for considering future reform to how the EU operates and when it acts.

2.7 Both principles are “legal” principles in that the EU institutions are bound by them and cannot legally act in breach of them. However, given their nature, they

require significant political judgment as to whether proposed action can better be achieved by Member States, or whether specific EU action is necessary in order to meet a given objective. As considered in section 4 below, the EU courts have to date not struck down an EU law on the grounds that it breaches the principle of Subsidiarity.

2.8 Article 352 TFEU is similarly not a free-standing area of EU competence, and cannot be used to extend EU competence but rather provides a power for the EU to take action in support of EU objectives when other Treaty Articles do not suffice.

3. A brief history of the EU Treaties

3.1 The Treaty on the European Economic Community (EEC) was signed in Rome on 25 March 1957 and entered into force on 1 January 1958. The EEC Treaty had a number of economic objectives, including establishing a European common market. Since 1957 a series of treaties has extended the objectives of what is now the European Union beyond the economic sphere. The amending treaties (with the dates on which they came into force) are: the Single European Act (1 July 1987), which provided for the completion of the Internal Market by 1992; the Treaty on European Union – the Maastricht Treaty (1 November 1993), which covered matters such as justice and home affairs, foreign and security policy, and economic and monetary union; and the Treaty of Amsterdam (1 May 1999), the Treaty of Nice (1 February 2003) and the Treaty of Lisbon (1 December 2009), which made a number of changes to the institutional structure of the EU.

3.2 Following these changes, there are now two main treaties which together set out the competences of the European Union:

- The Treaty on European Union (TEU); and
- The Treaty on the Functioning of the European Union (TFEU).

4. Subsidiarity

4.1 The EU can only act (or "exercise competence") where it has been given the power to do so by its 28 Member States, in one of its Treaties. This is known as the principle of conferral – the powers the EU has are ones conferred on it by its Member States.

4.2 In areas where the EU and Member States share the right to act, how is it to be decided which of them should act? This is where the principle of Subsidiarity comes in, to clarify at which level decisions should be taken.

4.3 Subsidiarity is a cross-cutting principle in the EU context, applicable whenever there is a choice between EU and national (or regional or local) action. It regulates the exercise of powers at EU level. In areas of shared or supporting competence, the EU should act only where action at EU level is more effective than action taken at national, regional or local level. Article 5(3) of the Treaty on European Union provides:

"Under the principle of Subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."

Where these conditions are not met, it would be contrary to the principle of Subsidiarity for the EU to act.

4.4 As successive Treaties have given the EU powers to act in more policy areas, the principle of Subsidiarity has arisen in more contexts. These are considered in case studies below.

4.5 It is important to note that the principle of Subsidiarity does not apply to areas of **exclusive EU competence**. In these areas, only the EU is entitled to act. And so the issue of the objective being better met by Member States simply does not arise.

4.6 The principle of Subsidiarity might be understood as having the following aims:

- Seeks to protect the powers of Member States;
- Seeks to limit EU action to cases where it is really needed;
- Focuses attention on the best level for action to achieve objectives;
- Ensures that actions are taken by the appropriate actor and that decisions are taken as closely as possible to citizens.

4.7 Some indicative understandings of Subsidiarity may be useful:

- Decisions should be taken as close as possible to the citizen.

- "*European when necessary; national when possible*"[1]

- a presumption that, where there is a choice, action should be taken by Member States except where EU action can add value

- "*For me, Subsidiarity is not a technical concept. It is a fundamental democratic principle. [This]...demands that decisions are taken as openly as possible and as closely to the people as possible.*

  Not everything needs a solution at European level. Europe must focus on where it can add most value. Where this is not the case, it should not meddle. The EU needs to be big on big things and smaller on smaller things - something we may occasionally have neglected in the past. The EU needs to show it has the capacity to set both positive and negative priorities."[2]

1 Netherlands Subsidiarity Review – June 2013 – expressing the guiding principle of subsidiary.

2 José Manuel Durão Barroso, President of the European Commission, State of the Union address, 11 September 2013. http://europa.eu/rapid/press-release_SPEECH-13-684_en.htm

1. Subsidiarity in the treaties

4.8 Subsidiarity as a concept was first introduced in the area of environment, in the Single European Act of 1987. It was made an explicit principle, applying to all areas where both Member States and the EU could act (shared and supporting competence), in the Maastricht Treaty, which entered into force in 1993. The Treaty of Amsterdam (1999) included Protocol (No 2) (with equal legal status to the treaty) on the application of the principles of Subsidiarity and Proportionality. The most recent EU treaty, the Lisbon Treaty, restated the principle of Subsidiarity in Article 5(3) TEU (see above atabove).

4.9 The Treaty of Lisbon also added an explicit reference to the regional and local dimension of the principle of Subsidiarity – it is no longer just about national or European action, but also asks about whether local or regional action could achieve the objective. Another innovation of the Lisbon Treaty was to strengthen the role of national Parliaments in policing compliance with the principle (Protocol (No 2) discussed in more detail from Protocol (No 2) on the Application of the Principles of Subsidiarity and Proportionality is of equal legal status to the Lisbon Treaty. It establishes that all EU institutions shall have 'constant respect for the principles of Subsidiarity and Proportionality' and gives specific roles to certain institutions. below).

4.10 Subsidiarity as a general principle of EU law can be seen elsewhere in the Treaties. For example, the second paragraph of Article 1 TEU refers to "*decisions [being] taken ... as closely as possible to the citizen*".

2. The roles of different EU institutions in upholding Subsidiarity

4.11 The principle of Subsidiarity applies to all the EU institutions. The rule has practical significance for legislative procedures. Inter-institutional agreements among three of the major EU institutions (the Council, Parliament and the Commission) in 1993 and 2003 (on Better Law-making[3]) set out how these institutions are to support application of the principle of Subsidiarity.

4.12 The **European Commission**, the body which proposes most EU legislation, must explain for each proposal why it thinks EU action is justified. It does this in the recitals to the act, in an explanatory memorandum, and in impact assessments. In order to do this effectively the European Commission's Impact Assessment Board routinely assesses the quality of Commission Subsidiarity assessments. In this way, Subsidiarity is also part of the European Commission (and UK's) drive for Better Regulation and high quality Impact Assessments.

4.13 The European Commission also draws up an annual report on the observance of the principle[4]. The European Commission and the European Parliament have also, in a framework agreement of 2010, undertaken to cooperate with national parliaments in order to facilitate the exercise by national parliaments of their power to scrutinise compliance with the principle of Subsidiarity.

3 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2003:321:0001:0005:EN:PDF

4 http://ec.europa.eu/smart-regulation/better_regulation/reports_en.htm

3. Subsidiarity in the EU courts

4.14 Member States and EU institutions[5] can bring challenges to new EU legislation in the Court of Justice of the EU (CJEU) in Luxembourg if they believe it does not comply with the principle of Subsidiarity. The Committee of the Regions, a consultative body which represents regions of EU Member States, can also bring challenges against legislation if it is on areas where the Treaties require them to be consulted.

4.15 When a challenge is brought in the EU courts to EU legislation on grounds of breach of Subsidiarity, the court will examine:

- Process: has the legislator sufficiently explained why it considers action at the EU level is justified in to achieving a desired policy objective?
- Substance– is action at the EU level justified to achieve a desired policy objective?

4.16 Courts may also use the concept of Subsidiarity as an interpretative tool where EU legislation is ambiguous and needs to be settled in favour of either greater or lesser scope for Member State action.

4.17 To date, there have been few cases and the Court of Justice of the EU (CJEU) has not struck down any legislation for breach of the principle.

4.18 On **process**, in the *Deposit Guarantee Schemes Directive* case[6], the CJEU was asked by Germany to consider a breach of Subsidiarity in respect of a piece of legislation which was alleged not to have set out why action at the EU level was justified. However, the Court was of the view that whilst Subsidiarity was not specifically referred to in the legislation, the legislation did explain why the proposed action could not be taken by Member States acting alone. As such, the Court decided that the EU had fulfilled the need to explain compliance with the principle of Subsidiarity.

4.19 On **substance**, in the *Working Time Directive case*[7], the UK challenged a piece of EU legislation (that regulated the maximum working week) on the basis of a breach of the principle of Subsidiarity. The CJEU, however, was satisfied that, once the Council had found that action at the EU level was justified to meet the objectives of the EU, that would be sufficient to meet the requirements of

5 Challenges to EU action on grounds of breach of Subsidiarity can also come before the EU courts in cases brought by people and legal persons (such as companies) in certain limited circumstances.

6 C-233/94 *Germany v Parliament and Council (Deposit Guarantee Schemes Directive)* [1997] ECR I-2405.

7 C-84/94 *United Kingdom v Council (Working Time Directive)* [1996] ECR I-5755.

Subsidiarity. In essence, the CJEU found that the political judgment of the EU legislature was that action at the EU level was sufficient to meet the test of Subsidiarity.

4.20 However, in some recent cases concerning challenges to the Biotechnological Inventions Directive[8], the Second Tobacco Labelling Directive[9] and the Food Supplements Directive[10], the CJEU asked - in greater detail than in previous cases - whether the measures that were being challenged were justified. It concluded on its own assessment that the relevant objectives could not satisfactorily be achieved by Member States acting alone, thus requiring action to be taken by the EU.

4.21 For the most part, cases before the CJEU have concerned measures relating to the EU's internal market where, once it is established that the EU has competence to act at all, the Subsidiarity question is relatively easy to answer given that there is normally a strong justification for action to be taken at the EU level given the cross-border impact. The CJEU's approach to the principle of Subsidiarity in respect of areas where there is not necessarily a cross-border element (such as environmental or social policies) remains to be seen.

4. The role of national parliaments

4.22 National parliaments play a vital role in ensuring that the principle of Subsidiarity is respected in the EU legal order.

5. Scrutiny

4.23 Different Member States have different processes for involving their national parliaments in the EU legislative process. In the UK, the Government has a system of Parliamentary scrutiny involving the two European committees of the House of Commons[11] and House of Lords[12]. The lead Whitehall department writes an explanatory memorandum explaining the draft legislation to help inform Parliament's consideration. This memorandum also sets out the Government's view of whether the draft legislation complies with Subsidiarity.

8 C-377/98 *Netherlands v European Parliament and Council* [2001] ECR I-7079.

9 C-491/01 *ex parte British American Tobacco* [2002] ECR I-11453.

10 C-154/04 and C-155/04 *Alliance for Natural Health* [2005] ECR I-6451.

11 http://www.parliament.uk/documents/upload/TheEuroScrutinySystemintheHoC.pdf

12 http://www.parliament.uk/documents/lords-committees/eu-select/Lords-EU-scrutiny-process.pdf

4.24 Some Member States operate in a similar manner to that of the UK, whereby their Parliament will scrutinise most EU legislative proposals in specialist European Affairs Committees. Others handle their scrutiny in sectoral committees, meaning that where a piece of proposed EU legislation relates to the environment, it is the environment committee which considers it. And in other Member States, Parliaments will focus their scrutiny on specific proposals identified in the Commission Work Programme identified as potentially raising Subsidiarity concerns, rather than scrutinising all draft legislation.

6. Reasoned opinions

4.25 The Treaty of Lisbon in 2009 enhanced the role of national parliaments with respect to Subsidiarity. Now national parliaments can formally object, via a "**reasoned opinion**" to the Presidents of the European Commission, the Council and European Parliament, if they consider that draft EU legislation does not comply with the principle of Subsidiarity. The timings are tight. Reasoned opinions must be produced within **eight weeks** of publication of the draft legislation.

4.26 The Treaty sets down rules on the consequences of reasoned opinions, based on the number of votes coming from national parliaments. Over certain thresholds, these are called "yellow" and "orange cards.

- Votes: In EU Member States with two chambers of parliament, as in the case of the UK, each chamber's opinion counts for one vote. If there is only one chamber, as in the case of Ireland, the reasoned opinion counts for two votes. At present, there are a total of 56 votes (28 Member States).

- **Yellow card:** If national parliaments representing at least one-third[13] of the total votes issue Reasoned Opinions on a draft, it must be reviewed. The institution which produced the draft legislative act may maintain, amend or withdraw it.

- **Orange card**: If national parliaments representing a simple majority challenge an ordinary legislative procedure proposal on grounds of Subsidiarity but the Commission maintains its proposal, it will be referred to the legislator (European Parliament and the Council). The proposal can be rejected by 55% of the members of the Council or a majority of European Parliament votes.[14]

13 Reduced to one quarter for proposals in the field of police and judicial cooperation in criminal matters.

14 See "National parliaments and EU law-making: how is the 'yellow card' system working? - Commons Library Standard Note", 12 April 2012 | Standard notes SN06297 at http://www.parliament.uk/briefing-papers/SN06297/national-Parliaments-and-eu-lawmaking-how-is-the-yellow-card-system-working

4.27 Since the entry into force of the Treaty of Lisbon, two yellow cards have been issued but no orange cards (see text box below).

4.28 The Lisbon Treaty also introduced new provisions which allow national parliaments to request their Government to take a case to the Court of Justice on their behalf where they think there has been a breach of the Subsidiarity principle. The UK Government and the European Committees in both Houses of Parliament have signed a Memorandum of Understanding to set out the procedures by which the UK Parliament may make use of these new powers. These new provisions have not yet been used in the UK, or in any other Member State.

4.24 The latest available figures show that in 2012, 70 Reasoned Opinions were submitted to the Commission on 34 proposals[15]. The UK Parliament issued five Reasoned Opinions in 2012. The House of Commons European Scrutiny Committee has to date issued 13 Reasoned Opinions during the life of the current Parliament (2010-15)[16] and the House of Lords EU Committee has issued seven Reasoned Opinions to date.[17]

15 Croatia became a Member State of the EU on 1 July 2013, and is therefore not included in this table.

16 http://www.parliament.uk/business/committees/committees-a-z/commons-select/european-scrutiny-committee/scrutiny-reserve-overrides/

17 http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-select-committee-/committee-work/parliament-2010/Subsidiarity/

5. Proportionality

5.1 Proportionality is the principle that where the EU acts, it should do no more than is necessary to achieve the objectives behind the action. Specifically, Article 5(4), paragraph 1 TFEU states:

> "*Under the principle of Proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties*."

This means that, where the EU acts, that action must be suitable to achieve the desired objective, and that the action should not go beyond what is necessary in order to achieve that objective. This includes a requirement that where there are differing ways to achieve an objective, the least onerous should be taken. Essentially this principle aims to prevent EU actions going beyond what is necessary to achieve the intended outcome.

5.2 Like Subsidiarity, the principle of Proportionality binds the EU institutions. Unlike Subsidiarity, it also applies to EU Member States when they act within the scope of EU law. So challenges can be brought in national courts to national actions which give effect to EU law.

5.3 Proportionality dates back to the establishment of what is now known as the EU, in the 1957 Treaty of Rome.

7. How the Court of Justice approaches Proportionality

5.4 The Court has considered a number of challenges to EU (and Member State) actions on the grounds of breach of the principle of Proportionality, but the Court has been cautious in using Proportionality to annul legislation.

5.5 For example, in a challenge to EU legislation which banned the use of some substances having a hormonal action in livestock farming (the *Fedesa* case[18]), it was argued that a total ban of those substances was disproportionate to the objective. The Court found that the decision taken by the EU legislator was proportionate, even taking into account the substantial negative financial

18 C-331/88 *R v Minister for Agriculture, Fisheries and Food, ex p Fedesa* [1990] ECR I-423.

consequences for some traders, and that the Court would only interfere in such policy judgments on grounds of Proportionality where the action was manifestly inappropriate.

5.6 Similarly, in the *Affish*[19] case, the EU Decision banning the importation of Japanese fish into the EU on health grounds was challenged as being disproportionate to the objective of protecting health. It was argued that not all Japanese fish factories had hygiene issues, and that banning all fish imports from Japan went too far. However, the Court held that because it would not be practical to check the hygiene standards of all Japanese fish factories and that a reasonably representative sample had been checked, it was proportionate to ban all Japanese fish imports.

5.7 A good example of where the Court has found an EU measure to be disproportionate is the *ABNA*[20] case. This concerned an EU Directive which required manufacturers of animal feed to indicate, at a customer's request, the exact composition of the feed. The Court found that this requirement impacted seriously on the economic interests of the manufacturers of animal feed, and that this obligation could not be justified by the objective of protecting health, and went beyond what was necessary to attain that objective. The Court annulled the legislation on the grounds of Proportionality.

5.8 In the context of review of Member State action, the Court held in *Kreil,*[21] that a rule requiring all armed units in the German armed forces had to be male was disproportionate. And in *Canal*[22] the Court found that Spanish legislation which requiring operators of certain television services to register details of their equipment was disproportionate where it duplicated controls already carried out in that state or another Member State.

19 C-183/95 *Affish BV v Rijksdienst voor de Keuring van Vee en Vlees* [1997] ECR I-4315.

20 Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04 *ABNA Ltd and Others v Secretary of State for Health and Others* [2005] ECR I-10423.

21 C-285/98 *Kreil v Bundesrepublik Deutschland* [2000] ECR I-69.

22 C-390/99 *Canal Satellite Digital SL v Aministracion General del Estado and Distribuidora de Television Digital SA (DTS)* [2002] ECR I-607.

8. Comparison of Subsidiarity and Proportionality

5.9 Protocol (No 2) on the Application of the Principles of Subsidiarity and Proportionality is of equal legal status to the Lisbon Treaty. It establishes that all EU institutions shall have '*constant respect for the principles of Subsidiarity and Proportionality*' and gives specific roles to certain institutions.

5.10 However, there are differences in the powers given to national parliaments in relation to their capacity to monitor legislative proposals on the grounds of Proportionality and Subsidiarity. Although national parliaments are able to issue reasoned opinions, which can trigger yellow and orange cards, on the grounds of Subsidiarity concerns, no such mechanism explicitly exists for parliaments to register their Proportionality concerns formally.

5.11 Nonetheless, national parliaments can and do record Proportionality concerns in their reasoned opinions and in their general political dialogue with the European Commission. For example, in its 2012 annual report on Subsidiarity and Proportionality the European Commission highlights the importance national parliaments place on considering questions of Proportionality, and their views on the interplay between the two principles.[23] According to a survey conducted by COSAC, the inter-Parliamentary forum for EU Parliaments, most national parliaments are of the view that Subsidiarity monitoring is not effective unless Proportionality monitoring also takes place[24]. Some commentators have called for the scope of reasoned opinions to be extended to include Proportionality.[25]

5.12 The Commission is required to produce an annual report for the European Council, European Parliament, the Council and national parliaments on the application of Article 5 of the TFEU which covers both Proportionality and Subsidiarity. This report is also sent to the Economic and Social Committee and the Committee of the Regions. The most recent report (for 2012):

- sets out the Commission's views on democratic accountability and how this can be increased through political dialogue between national parliaments and the Commission.
- notes the important role played by COSAC.

23 See Report from the Commission, Annual Report 2012 on Subsidiarity and Proportionality

24 See COSAC Eighteenth Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny, 27 September 2012

25 See From Subsidiarity to Better EU Governance: A Practical Reform Agenda for the EU | Clingandel Report March 2014

- argues for greater strengthening of scrutiny at national and European parliamentary levels, and for more cooperation between national parliaments and the European Parliament.
- notes that in 2012, 663 written opinions (an increase of 7% compared to 2011) on legislative and non-legislative documents were received from national parliaments, of which 70 were reasoned opinions (on 34 proposals) up from 64 in 2011.
- notes that six policy areas accounted for more than half of the opinions: internal market and services; justice; home affairs; mobility and transport; employment; and health.
- notes that Portugal, Italy and Germany's parliamentary chambers were the most active in issuing opinions. The UK issued 22: 16 from the House of Lords; and 6 from the House of Commons.

	Subsidiarity	Proportionality
General principle of EU law	√	√

Binds European Commission	√	√
Binds European Parliament	√	√
Binds Council	√	√

Binds EU Member States when implementing EU law	**X**	√
Can be challenged in Court of Justice of the EU	√	√
Can be basis for Reasoned Opinion of national parliament – leading to yellow or orange card	√	**X**

Covered in annual Commission report	√	√

6.1

6. Article 352 – a broad enabling or flexibility clause

6.1 Article 352 TFEU provides a power that can be used to fill the gap where no specific provisions of the Treaty confers express or implied powers to act, if such powers appear none the less to be necessary to enable the Union to carry out its functions with a view to attaining one of the objectives laid down by the Treaty. It says:

> *If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. Where the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament.*

6.2 This provides a potentially wide and flexible legal basis that could extend to anything coming within EU competence, as defined by its tasks and activities in Articles 3 TEU and 3, 4 and 6 TFEU. However, the powers in Article 352 TFEU are not unlimited, and cannot be used to extend EU competence.

6.3 As this is a sensitive power with potentially wide-ranging application, any proposal made must secure the unanimous agreement of the Council and, following the entry into force of the Lisbon Treaty, the consent of the European Parliament. Some national parliaments also play a role. The case of the UK is described below at paragraph Section 8 of the European Union Act 2011 ("EU Act") contains provisions on the rules and procedures applicable in the UK to proposals for EU legislation based in whole or in part on Article 352 TFEU. Under section 8 of the EU Act, a UK Government Minister may not vote in favour of, or otherwise support, a proposal for EU legislation which is based on Article 352 TFEU, in whole or in part, unless the draft legislation has received prior approval by Act of Parliament.. The German government may not support the use of Article 352 without seeking prior legislative approval from both houses of parliament, following an important decision[26] by its Constitutional Court on the compatibility of Treaty of Lisbon with the German constitution.

6.4 Article 352's predecessor article (Article 308 of the then Treaty on the European Community) was used as a legal base for hundreds of pieces of legislation. This attracted some criticism for stretching the EU treaties beyond what was originally intended. In many cases, following the use of Article 308 in a particular area, a new Treaty article was adopted in the Lisbon Treaty providing the legal base for action which had been missing before. Thus for example, in the case of sanctions, there are now two Treaty articles, Article 75 and 215, which allow for targeted sanctions against individuals. So it would seem likely that these more

26 Decision of BVerFG 30 June 2009, 123, 267.

specific provisions will be used, and that Article 352 will be used less often. This seems to be the case so far (see examples of legislation adopted since Lisbon below) but may evolve if Member States and the EU institutions wish to agree EU action in new areas.

6.5 There have been only a few examples of EU action on the basis of Article 352 TFEU since the entry into force of the Lisbon Treaty:

- legislation to recognise electronic versions of the EU's Official Journal as authentic and legally binding;
- approving the framework of an EU agency on fundamental rights;
- a decision to give EU historical archives at the European University Institute in Florence; and
- a decision to adopt a "Europe for Citizens" programme.

9. Historical development of Article 352

6.6 The EU Treaties have always contained a catch-all provision like Article 352 TFEU.

6.7 Article 235 of the original Treaty of Rome (1957) specified that the power should be used for *"action by the Community... necessary to attain, in the course of the operation of the common market one of the objectives of the Community"*, and this provision remained unchanged up to and including the Treaty of Nice. Prior to the Lisbon Treaty (2009), this clause was last numbered Article 308 of the Treaty on the European Community.

6.8 The Lisbon Treaty has a broader wording to reflect that the scope and objectives of EU action had widened to encompass issues beyond the economic and market-based, such that Article 352 TFEU can now be used for *"action by the Union...necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties"*. However, Lisbon amendments also made clear that Article 352 TFEU cannot be used for action in the area of common foreign and security policy[27] as an area in which decision-making is for the most part intergovernmental and taken by Member States.

6.9 Another change in the Lisbon Treaty is that the European Parliament must now consent to the use of Article 352 TFEU. Under the previous version (Article 308 TEC), it was merely consulted.

6.10 Upon the adoption of the Lisbon Treaty, the Heads of State or Government adopted two relevant Declarations. Declaration (No 41) specifies that the reference to objectives of the Union in Article 352 is not limited to promoting peace, EU values and the well-being of EU people with respect to external action.

27 See *Foreign Policy report – review of the balance of competences* published 22 July 2013 available at https://www.gov.uk/review-of-the-balance-of-competences.

6.11 Declaration (No. 42) on Article 352 of the Treaty on the Functioning of the European Union made clear the view of EU Heads of State or Government on its restricted nature:

> *"The Conference underlines that, in accordance with the settled case law of the Court of Justice of the European Union, Article 352 of the Treaty on the Functioning of the European Union, being an integral part of an institutional system based on the principle of conferred powers, cannot serve as a basis for widening the scope of Union powers beyond the general framework created by the provisions of the Treaties as a whole and, in particular, by those that define the tasks and the activities of the Union. In any event, this Article cannot be used as a basis for the adoption of provisions whose effect would, in substance, be to amend the Treaties without following the procedure which they provide for that purpose."*

6.12 This is intended to make clear that this article cannot be used to widen the scope of the EU's powers beyond those already set out in the EU Treaties. It also makes clear that Article 352 TFEU cannot be used to adopt provisions which would have the effect of amending the EU Treaties, as the Treaties themselves already lay down specific procedures for their amendment.

6.13 There is no case-law yet on the use of Article 352 as a legal basis for EU action but past cases show how the EU courts approached its predecessor.

10. Scope and Interpretation of Article 352 TFEU

In *Opinion 2/94*[28] concerning accession by the European Community to the European Convention on Human Rights (ECHR), the Court held that Article 308 TEC, the predecessor of Article 352 TFEU, did not provide a legal basis because accession would have fundamental institutional implications. In particular the Court found that Article 308 cannot serve as a basis for widening the scope of [Union] powers beyond the general framework created by the provisions of the Treaty as a whole and, in particular, by those that define the tasks and the activities of the [Union].

Similarly in *Kadi*[29] the Court held that Article 308 TEC, could not be used to pursue objectives relating to the EU's common foreign and security policy. It could only be used to pursue objectives of the European Community (as was) as specified in the EC Treaty.

This restriction on the use of Article 352 has now been made explicit in its paragraph 4, which says,

> "*This Article cannot serve as a basis for attaining objectives pertaining to the common foreign and security policy*".

28 *Opinion 2/94* [1996] ECR I-1759,

29 Cases C-402/05P and C-415/P *Kadi* [2008] ECR I-06351, paragraphs 198-204.

However, Article 352 TFEU is available for police and judicial co-operation in criminal matters.

Also, the powers in Article 352 TFEU cannot be used to circumvent restrictions in other, more specific Treaty articles. Indeed, Article 352(3) expressly prohibits the use of Article 352 to harmonise the laws or regulations of Member States where this is excluded by the Treaties. So Article 352 could not be used to circumvent the exclusion of harmonisation in, for example, Articles 165(4) – concerning education, vocational training, youth and sport – or 167(5) TFEU – culture.

Article 352 TFEU or its predecessors have been used to create decision-making agencies, such as the Office for Harmonisation in the Internal Market[30] and the Community Plant Variety Office[31].

The *Pringle* case[32] (challenging the legality of the European Stability Mechanism) recently confirmed that the availability of powers for the Union to act under Article 352 TFEU does not imply any obligation to use those powers[33].

11. Relevant UK legislation

6.14 Section 8 of the European Union Act 2011 ("EU Act") contains provisions on the rules and procedures applicable in the UK to proposals for EU legislation based in whole or in part on Article 352 TFEU. Under section 8 of the EU Act, a UK Government Minister may not vote in favour of, or otherwise support, a proposal for EU legislation which is based on Article 352 TFEU, in whole or in part, unless the draft legislation has received prior approval by Act of Parliament.

6.15 Where legislation needs to be adopted urgently by the EU based in whole or in part on Article 352 TFEU, section 8(4) of the EU Act makes provision for the following procedure to apply:

30 Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

31 Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ 1994 L 227, p. 1).

32 Case C-370/12, *Thomas Pringle v Government of Ireland, Ireland and The Attorney General*, [2012] ECR - 00000

33 Paragraph 67, citing Case 22/70 *Commission* v *Council* ('*ERTA*') [1971] ECR 263, paragraph 95

- In each House of Parliament, a Minister must move a motion that the House approves the Government's intention to support a specified draft decision without prior approval by Act, and is of the opinion that the measure concerned is required as a matter of urgency;
- Each House of Parliament agrees to the motion without amendment.

6.16 Section 8(6) of the EU Act sets out a number of circumstances where proposals for EU legislation based in whole or in part on Article 352 TFEU will be exempt both from the requirement for prior approval by Parliament by primary legislation and, unlike the urgency condition, for a motion to be passed in both Houses. The five exemptions are that the proposed measure:–

i. is **equivalent** to a measure already adopted under Article 352 TFEU;
ii. only extends or **renews** an existing measure without changing its substance;
iii. extends existing Article 352 measures to **another Member State or third country**;
iv. **repeals** an existing measure adopted under Article 352 TFEU; or
v. **consolidates** existing measures adopted in whole or in part under Article 352 TFEU, without changing their substance.

6.17 The practice has arisen that every year or so the UK Parliament is asked to adopt measures in an annual bill, which, upon adoption, becomes known as the EU (Approvals) Act [YYYY].

6.18 The EU (Approvals) Act 2013 approved two EU decisions adopted under Article 352, providing for:

- the electronic version of the Official Journal of the European Union (OJ) to be the authentic and legally recognised edition of the OJ.
- a new Multiannual Framework for the EU Fundamental Rights Agency to operate from the beginning of 2013 until the end of 2017.

6.19 Similarly, the EU (Approvals) Act 2014 approved:

- the draft decision to adopt the Council Regulation on the deposit of the historical archives of the institutions at the European University Institute in Florence, and
- the draft decision to adopt the Council Regulation establishing for the period 2014-2020 the programme "Europe for Citizens."

7. How to respond to this Call for Evidence

7.1 We would welcome evidence from anyone with relevant knowledge, expertise or experience. We would welcome contributions from individuals, companies, civil society organisations including think-tanks, and governments and governmental bodies. We welcome input from those within the UK or beyond our borders.

7.2 Your evidence should be objective, factual information about the impact or effect of these principles of Subsidiarity and Proportionality and/or Article 352 TFEU in your area of expertise. Questions on which we would value input are set out in section 9 below. Where your evidence is relevant to other balance of competences reviews, we will pass your evidence over to the relevant review teams.

7.3 We will expect to publish your response and the name of your organisation unless you ask us not to (but please note that, even if you ask us to keep your contribution confidential, we might have to release it in response to a request under the Freedom of Information Act). We will not publish your own name unless you wish it included. Please base your response on answers to the questions set out below.

7.4 We will be hosting a series of events to proactively seek evidence and to give further information on the Review. To register your interest in these events or if you have any other questions relating to the issues in this Review, please contact: BalanceofCompetencesSubsidiarity@fco.gov.uk

7.5 Please send your evidence by midday on 30 June 2014 to:

By	Email:
BalanceofCompetencesSubsidiarity@fco.gov.uk	

By Post: BoC Team, PTF, Foreign and Commonwealth Office, King Charles Street, London SW1A 2AH

8. Call for Evidence questions on Subsidiarity, Proportionality, and Article 352 TFEU

12. Scope

1. Are the principles of Subsidiarity and Proportionality effective ways to decide when the EU acts, and how it acts? You may wish to refer to particular examples in your evidence.

13. Interpretation

2. What are your views on how the principles have been interpreted in practice by EU and Member State actors including: the EU courts, the other EU institutions, Member State governments, Member State parliaments, sub-national or regional bodies and civil society?

14. Application

3. Do you have any observations on how the different actors play their roles? Could they do anything differently to ensure that action takes place at the right level?

4. The EU Treaties treat Subsidiarity differently from Proportionality. National parliaments have a role in reviewing whether EU action is appropriate (Subsidiarity). The EU is not legally permitted to act where it is not proportionate (Proportionality). Does it make sense to separate out the two principles like this, and use different means to protect them?

15. Future options and challenges

5. Where might alternative approaches or actions as regards the scope, interpretation and application of the principles of Subsidiarity and Proportionality be beneficial?

16. Article 352 TFEU ('flexibility clause')

6. In your opinion, based on particular examples, is it useful to have a catch-all treaty base for EU action? How appropriately has Article 352 been used?

7. Which alternative approaches to the scope, interpretation and application of Article 352 might be beneficial?

17. Other

8. Are there any general points you wish to make on how well the current procedures and actors work to ensure that the EU only acts where it is appropriate to do so, and in a way which is limited to the EU's objectives, which are not captured above?

Annex A: Links with other Balance of Competences reports

The review of Subsidiarity and Proportionality overlaps with a number of other Balance of Competences reviews. These are all available at: http://www.gov.uk/review-of-the-balance-of-competences.

Semester One (final reports published in July 2013)

- **Single Market**: Raised issue of Treaty principles being applied in areas where there is limited or no formal EU competence.

- **Taxation**: The report stressed the general view of UK respondents was EU-

level action on taxation was appropriate only where there was a clear internal market justification Many said they would like less EU-level involvement in taxation.

- **Health:** References to the UK Government has asserted the principle of Subsidiarity in ongoing negotiations on EU capabilities in the area of cross-border health threats like pandemic flu.

- **Development:** The report noted this is an area of shared competence and the Treaty requires EU's and Member States' policy in these areas to complement and reinforce each other. Although the EU has legal personality, and its competence in these areas extends to concluding international agreements with third states and international organisations, it does not affect Member States' ability to do so

Semester Two (final reports published 13 February 2014)

- **Trade and Investment**: Suggestion of looking for more Subsidiarity in response to pressures between those within and outside the Eurozone.

- **Environment and Climate** Change: Some references to areas where action more appropriate at national rather than EU-Level e.g. planning, noise, protection of soli, flooding and environmental justice.

- **Transport**: Contributors supported EU action where transport crosses EU member States but there is a feeling that EU action fails to take account of distinct circumstances of Member States with peripheral geographical locations. The EU can impose some cross border rules on local and domestic transport that operate solely within UK and do not affect Single Market.

Semesters Three and Four (forthcoming)

Mae cyfyngiadau ar y ddogfen hon